

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM  
BOARD OF RETIREMENT  
2223 E. WELLINGTON AVENUE, SUITE 100  
SANTA ANA, CALIFORNIA**

**REGULAR MEETING  
Tuesday, February 22, 2022  
9:30 A.M.**

**Pursuant to Assembly Bill 361, signed into law on September 16, 2021 as urgency legislation, Governor Newsom’s Proclamation of a State of Emergency on March 4, 2020, which Proclamation is still in effect; and Board of Retirement Resolution 2022-01, this meeting will be conducted by video/teleconference only, in compliance with Government Code section 54953 as amended by Assembly Bill 361. None of the locations from which the Board members will participate will be open to the public.**

**Members of the public who wish to observe and/or participate in the meeting may do so via the Zoom app or via telephone. Members of the public who wish to provide comment during the meeting may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing \* 9 on your telephone keypad.**

OCERS Zoom Video/Teleconference information	
<p><b>Join Using Zoom App (Video &amp; Audio)</b></p> <p><a href="https://ocers.zoom.us/j/82516706379">https://ocers.zoom.us/j/82516706379</a></p> <p><b>Meeting ID: 825 1670 6379</b> <b>Password: 649681</b></p> <p>Go to <a href="https://www.zoom.us/download">https://www.zoom.us/download</a> to download Zoom app before meeting Go to <a href="https://zoom.us">https://zoom.us</a> to connect online using any browser.</p>	<p><b>Join by Telephone (Audio Only)</b></p> <p>Dial by your location</p> <p>+1 669 900 6833 US (San Jose) +1 346 248 7799 US (Houston) +1 253 215 8782 US +1 301 715 8592 US +1 312 626 6799 US (Chicago) +1 929 436 2866 US (New York)</p> <p><b>Meeting ID: 825 1670 6379</b> <b>Password: 649681</b></p>
<p>A <a href="#">Zoom Meeting Participant Guide</a> is available on OCERS website <a href="#">Board &amp; Committee meetings page</a></p>	

**AGENDA**

**The Orange County Board of Retirement welcomes you to this meeting. This agenda contains a brief general description of each item to be considered. The Board of Retirement may take action on any item included in the following agenda; however, except as otherwise provided by law, no action shall be taken on any item not appearing on the agenda. The Board of Retirement may consider matters included on the agenda in any order, and not necessarily in the order listed.**

**CALL MEETING TO ORDER AND ROLL CALL**

**PUBLIC COMMENTS**

At this time, members of the public may comment on (1) matters not included on the agenda, provided that the matter is within the subject matter jurisdiction of the Board; and (2) any matter appearing on the Consent Agenda. Members of the public who wish to provide comment at this time may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing \* 9 on your telephone keypad. When addressing the Board, please state your name for the record prior to providing your comments. Speakers will be limited to three (3) minutes.

In addition, public comment on matters listed on this agenda will be taken at the time the item is addressed.

**CONSENT AGENDA**

All matters on the Consent Agenda are to be approved by one action unless a Board Member requests separate action on a specific item.

**BENEFITS**

**C-1 OPTION 4 RETIREMENT ELECTION**

**Recommendation:** Grant election of retirement benefit payment, Option 4, based on Segal Consulting’s actuarial report.

- 1. None

**ADMINISTRATION**

**C-2 BOARD MEETING MINUTES**

Regular Board Meeting Minutes

January 18, 2022

**Recommendation:** Approve minutes.

**C-3 BOARD FINDINGS PURSUANT TO GOVERNMENT CODE § 54953, AS AMENDED BY AB 361, AND ADOPTION OF BOARD RESOLUTION 2022-02**

**Recommendation:** That the Board (1) make the following findings pursuant to Government Code section 54953, as amended by AB 361;

- a. The Board has reconsidered the circumstances of the state of emergency resulting from the COVID-19 pandemic; and
- b. The Board has determined that the following circumstances exist:
  - i. The state of emergency continues to directly impact the ability of the members of the Board to meet safely in person; and

- ii. State or local officials continue to impose or recommend measures to promote social distancing.

and

(2) Adopt Board of Retirement Resolution 2022-02 to reflect such findings.

**C-4 RETIREE REQUEST TO BE REINSTATED – MARY ANN JOHNSON**

**Recommendation:** Reinstate Ms. Johnson as an active member under the provisions of Government Code Section 31680.4 and 31680.5.

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**DISABILITY/MEMBER BENEFITS AGENDA**

**9:30 AM**

**NOTE: WHEN CONSIDERING DISABILITY RETIREMENT APPLICATIONS OR MEMBER APPEALS OF BENEFIT OR DISABILITY RETIREMENT DETERMINATIONS, THE BOARD MAY ADJOURN TO CLOSED SESSION TO DISCUSS MATTERS RELATING TO THE MEMBER’S APPLICATION OR APPEAL, PURSUANT TO GOVERNMENT CODE SECTIONS 54957 OR 54956.9. IF THE MATTER IS A DISABILITY APPLICATION UNDER SECTION 54957, THE MEMBER MAY REQUEST THAT THE DISCUSSION BE IN PUBLIC.**

**OPEN SESSION**

**CONSENT ITEMS**

All matters on the Consent Agenda are to be approved by one action unless a Board member requires separate action on a specific item. If separate action is requested, the item will be discussed in closed session during agenda item DA-1.

**DC-1: JOE BATRIZ**

Facility Maintenance Specialist I, Orange County Sheriff’s Department (General Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as August 14, 2020.

**DC-2: MIHAIL DANCIULESCU**

Sergeant, Orange County Sheriff’s Department (Safety Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant Service connected disability retirement.
- Set the effective date as November 22, 2019.

**DC-3: GARY KING**

Service Worker, Orange County Transportation Authority (General Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Deny service and non-service connected disability retirement without prejudice due to the member's failure to cooperate.

**DC-4: ERIKA OCHOA**

Office Specialist, Orange County Social Services Agency (General Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Deny service and non-service connected disability retirement without prejudice due to the member's failure to cooperate.

**DC-5: PAUL SATRAS**

Fire Captain, Orange County Fire Authority (Safety Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as March 27, 2020.

**DC-6: SIMA AZMA**

Application Developer I, Orange County Superior Court

**Recommendation:** the Board approve and adopt the findings and recommendations of the Hearing Officer as set forth in the Proposed Findings of Fact Conclusions and Recommendation dated October 13, 2021 (Recommendation) wherein the Hearing Officer recommended that the Applicant, Sima Azma, request for service connected disability be denied.

**CLOSED SESSION**

**Government Code section 54957**

**Adjourn to Closed Session under Government Code section 54957 to consider member disability applications and to discuss member medical records submitted in connection therewith. The applicant may waive confidentiality and request his or her disability application to be considered in Open Session.**

**OPEN SESSION**

**REPORT OF ACTIONS TAKEN IN CLOSED SESSION**



**DA-1: INDIVIDUAL ACTION ON ANY ITEM TRAILED FROM THE DISABILITY/MEMBER BENEFITS  
CONSENT AGENDA**

**CLOSED SESSION**

**Government Code section 54957**

**Adjourn to Closed Session under Government Code section 54957 to consider member disability applications and to discuss member medical records submitted in connection therewith. The applicant may waive confidentiality and request his or her disability application to be considered in Open Session.**

**OPEN SESSION**

**REPORT OF ACTIONS TAKEN IN CLOSED SESSION**

**ACTION ITEMS**

**NOTE:** Public comment on matters listed in this agenda will be taken at the time the item is addressed, prior to the Board’s discussion of the item. **Members of the public who wish to provide comment in connection with any matter listed in this agenda may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing \* 9, at the time the item is called.**

**A-1 INDIVIDUAL ACTION ON ANY ITEM TRAILED FROM THE CONSENT AGENDA**

**A-2 2022 COST OF LIVING ADJUSTMENT**

*Presentation by Suzanne Jenike, Assistant CEO of External Operations, OCERS; Andy Yeung, and Paul Angelo, Segal*

**Recommendation:** Adjust all applicable benefit allowances by 3% effective April 1, 2022, and bank 1%, in accordance with Government Code section 31870.1, resulting from the 3.83% change to CPI in calendar year 2021 (rounded to 4%).

**A-3 SACRS BOARD OF DIRECTORS ELECTIONS 2022-2023**

*Presentation by Gina M. Ratto, General Counsel*

**Recommendation:** Identify one or more nominees for the SACRS Board of Directors election to be conducted on May 13, 2022; and direct staff to submit the nomination(s) to the SACRS Nominating Committee on or before March 1, 2022.

**A-4 PERSONNEL COMMITTEE OUTCOMES FROM COMMITTEE MEETING HELD ON FEBRUARY 7, 2022**

*Presentation by Suzanne Jenike, Suzanne Jenike, Assistant CEO of External Operations, OCERS*

**Recommendation:** The Personnel Committee recommends the Board of Retirement approve the following items:

- 1) Approve the addition of two Extra Help positions, classified as a Member Services Manager and a Disability Manager in the External Operations division; and
- 2) Approve an amendment to OCERS' Administrative Budget for Fiscal Year 2022 by transferring \$25,000 from the Services and Supplies category to the Personnel category to account for budgeted costs for the Business Plan initiatives of a comprehensive review of the applicable MOUs for all OCERS Participating Employers being utilized using Extra Help positions instead of a third party consultant.

### **INFORMATION ITEMS**

Each of the following informational items will be presented to the Board for discussion.

#### **Presentations**

- I-1 2021 EMPLOYEE, MANAGER AND INNOVATOR OF THE YEAR**  
*Presentation by Steve Delaney, Chief Executive Officer, OCERS*
- I-2 ACTUARIAL TOPICS WITH SEGAL**  
*Presentation by, Todd Tauzer, Andy Yeung, and Paul Angelo, Segal*
- I-3 UPDATE ON FINAL AVERAGE SALARY**  
*Presentation by Suzanne Jenike, Assistant CEO of External Operations, OCERS*
- I-4 UPDATE ON STAFFING**  
*Presentation by Cynthia Hockless, Director of Human Resources, OCERS*
- I-5 M365 MIGRATION IMPACT TO BOARD MEMBERS**  
*Presentation by Matt Eakin, Director of Cyber Security and Manuel Serpa, Staff Attorney, OCERS*
- I-6 COVID-19 UPDATE**  
*Presentation by Steve Delaney, Chief Executive Officer, OCERS*

### **WRITTEN REPORTS**

The following are written reports that will not be discussed unless a member of the Board requests discussion.

- R-1 MEMBER MATERIALS DISTRIBUTED**  
Written Report

Application Notices  
Death Notices

February 22, 2022  
February 22, 2022

- R-2 COMMITTEE MEETING MINUTES**  
- 12-15-2021 Audit Committee Minutes
  
- R-3 CEO FUTURE AGENDAS AND 2022 OCERS BOARD WORK PLAN**  
Written Report
  
- R-4 QUIET PERIOD – NON-INVESTMENT CONTRACTS**  
Written Report
  
- R-5 BOARD COMMUNICATIONS**  
Written Report
  
- R-6 LEGISLATIVE UPDATE**  
Written Report
  
- R-7 OVERPAID AND UNDERPAID PLAN BENEFITS – 2021 REPORT**  
Written Report
  
- R-8 2022 STAR COLA COST POSTING**  
Written Report
  
- R-9 2021 BUSINESS PLAN – END OF YEAR REPORT**  
Written Report
  
- R-10 ANNUAL REPORT OF CONTRACTS GREATER THAN \$100,000**  
Written Report
  
- R-11 2022 POLICY COMPLIANCE REPORT**  
Written Report
  
- R-12 SUMMARY OF DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IN *O’NEAL V. STANISLAUS COUNTY EMPLOYEES’ RETIREMENT ASSOCIATION, ET AL* (CASE NO. F079201)**  
Written Report

**CHIEF EXECUTIVE OFFICER/STAFF COMMENTS**

**COUNSEL COMMENTS**

**BOARD MEMBER COMMENTS**

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**ADJOURNMENT:**

**NOTICE OF NEXT MEETINGS**

**INVESTMENT COMMITTEE MEETING**

**February 23, 2022**

**9:30 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

**2223 E. WELLINGTON AVENUE, SUITE 100**

**SANTA ANA, CA 92701**

**DISABILITY COMMITTEE MEETING**

**March 21, 2022**

**8:30 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

**2223 E. WELLINGTON AVENUE, SUITE 100**

**SANTA ANA, CA 92701**

**REGULAR BOARD MEETING**

**March 21, 2022**

**9:30 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

**2223 E. WELLINGTON AVENUE, SUITE 100**

**SANTA ANA, CA 92701**

*AVAILABILITY OF AGENDA MATERIALS - Documents and other materials that are non-exempt public records distributed to all or a majority of the members of the OCERS Board or Committee of the Board in connection with a matter subject to discussion or consideration at an open meeting of the Board or Committee of the Board are available at the OCERS' website: <https://www.ocers.org/board-committee-meetings>. If such materials are distributed to members of the Board or Committee of the Board less than 72 hours prior to the meeting, they will be made available on the OCERS' website at the same time as they are distributed to the Board or Committee members. Non-exempt materials distributed during an open meeting of the Board or Committee of the Board will be made available on the OCERS' website as soon as practicable and will be available promptly upon request.*

It is OCERS' intention to comply with the Americans with Disabilities Act ("ADA") in all respects. If, as an attendee or participant at this meeting, you will need any special assistance beyond that normally provided, OCERS will attempt to accommodate your needs in a reasonable manner. Please contact OCERS via email at [adminsupport@ocers.org](mailto:adminsupport@ocers.org) or call 714-558-6200 as soon as possible prior to the meeting to tell us about your needs and to determine if accommodation is feasible. We would appreciate at least 48 hours' notice, if possible. Please also advise us if you plan to attend meetings on a regular basis.

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM  
BOARD OF RETIREMENT  
2223 E. WELLINGTON AVENUE, SUITE 100  
SANTA ANA, CALIFORNIA**

**REGULAR MEETING  
January 18, 2022  
9:30 a.m.**

**MINUTES**

Chair Eley called the meeting to order at 9:30 a.m.

Recording Secretary administered the Roll Call attendance.

Attendance was as follows:

Present via Zoom Video conference pursuant to Government Code § 54953, as amended by AB 361:

Frank Eley, Chair; Shawn Dewane, Vice Chair; Richard Oates, Adele Tagaloa, Charles Packard, Chris Prevatt, Arthur Hidalgo, Jeremy Vallone, and Wayne Lindholm

Also Present via Zoom: Steve Delaney, Chief Executive Officer; Brenda Shott, Assistant CEO, Internal Operations; Suzanne Jenike, Assistant CEO, External Operations; Gina Ratto, General Counsel; Jenny Sadoski, Director of Information Technology, Anthony Beltran, Audio-Visual Technician; Cammy Torres; Recording Secretary

Absent: Shari Freidenrich

**CONSENT AGENDA**

**MOTION** by Mr. Packard, **seconded** by Mr. Lindholm to approve recommendations on all of the following items on the Consent Agenda:

**BENEFITS**

**C-1 OPTION 4 RETIREMENT ELECTION**

**Recommendation:** Grant election of retirement benefit payment, Option 4, based on Segal Consulting's actuarial report.

1. McHenry, Michael P.
2. Whitehurst, Daniel W.

**ADMINISTRATION**

**C-2 BOARD MEETING MINUTES**

Regular Board Meeting Minutes

December 13, 2021

**Recommendation:** Approve minutes.

**C-3 BOARD FINDINGS PURSUANT TO GOVERNMENT CODE § 54953, AS AMENDED BY AB 361, AND ADOPTION OF BOARD RESOLUTION 2022-01**

**Recommendation:** That the Board (1) make the following findings pursuant to Government Code section 54953, as amended by AB 361;

- a. The Board has reconsidered the circumstances of the state of emergency resulting from the COVID-19 pandemic; and
- b. The Board has determined that the following circumstances exist:
  - i. The state of emergency continues to directly impact the ability of the members of the Board to meet safely in person; and
  - ii. State or local officials continue to impose or recommend measures to promote social distancing.

and

(2) Adopt Board of Retirement Resolution 2022-01 to reflect such findings.

**C-4 2022 BUDGET AMENDMENT – IT CAPITAL EXPENDITURES**

**Recommendation:** Approve an amendment to OCERS’ Administrative Budget for Fiscal Year 2022 to carryover costs related to the 2021 Business Plan initiatives to upgrade the Board Room Audio/Visual equipment for \$532,000 and implement new backup solutions to enhance recovery of on premise and cloud systems for \$250,000.

The motion passed **unanimously.**

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**CONSENT ITEMS: DISABILITY/MEMBER BENEFITS AGENDA**

**OPEN SESSION**

**CONSENT ITEMS**

**MOTION** by Dewane, **seconded** by Lindholm, to approve staff’s recommendation on all of the following items on the Disability/Member Benefits Consent Agenda:

**DC-1: DANIEL BOWDISH**  
Investigator, Orange County Sheriff's Department (Safety Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant non-service connected disability retirement.
- Set the effective date as September 11, 2020.

**DC-2: LIDIA CARMONA**  
Social Worker II, Orange County Social Services Agency (General Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Deny service connected disability retirement due to insufficient evidence of job causation.

**DC-3: EDITH GAGE**  
Correctional Services Technician, Orange County Sheriff's Department (General Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant Service connected disability retirement.
- Set the effective date as March 26, 2021.

**DC-4: LILIAN GRANILLO**  
Sergeant, Orange County Sheriff's Department (Safety Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as September 11, 2020.

**DC-5: ROBERT HOFFMANN**  
Deputy Sheriff II, Orange County Sheriff's Department (Safety Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as March 26, 2021.

**DC-6: BRIAN HOPP**  
Firefighter, Orange County Fire Authority (Safety Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as January 18, 2019.

**DC-7: JEFFREY HUBERT**  
Fire Apparatus Engineer, Orange County Fire Authority (Safety Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as January 1, 2021.

**DC-8: JEFFREY McBRIDE**  
Firefighter, Orange County Fire Authority (Safety Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as April 22, 2021.

**DC-9: HERMAN RANGEL**  
Employment & Eligibility Specialist, Orange County Social Services Agency (General Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as, October 14, 2016, the day following the last day of regular compensation as an Employment & Eligibility Specialist.
- Find the Applicant is capable of performing other duties in the service of the County of Orange pursuant to Government Code Section 31725.65.
- Grant a supplemental disability retirement payment allowance in the amount of the salary difference between the higher and lower paying positions effective May 7, 2021, the date of the position change, until the day Mr. Rangel wishes to retire from the new position.

**DC-10: DAVID WOLF**  
Fire Captain/Paramedic, Orange County Fire Authority (Safety Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as the day after the last day of regular compensation.

**DC-11: RANDY ZERANCE**  
Sheriff's Special Officer II, Orange County Sheriff's Department (General Member)

**Recommendation:** The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as the day after the last day of regular compensation.

The motion passed **unanimously.**

#### **OPEN SESSION**

**DA-1: INDIVIDUAL ACTION ON ANY ITEM TRAILED FROM THE DISABILITY/MEMBER BENEFITS  
CONSENT AGENDA**

None.



**DA-2: MCDONALD, KEVIN – REQUEST FOR REDUCTION OF OVERPAID BENEFITS**

**Recommendation:** Staff recommends that the Board deny the Applicant’s request to reduce the overpayment amount of \$3,465.73 owed by the Applicant due to overpaid disability benefits by \$2,500.

Ms. Jenike presented item DA-2.

Mr. McDonald requested that the Board reduce his overpayment by \$2,500 due to his belief that OCERS was responsible for his receiving of an overpayment of benefits.

**MOTION** by Dewane, **seconded** by Packard, to deny the Applicant’s request to reduce the overpayment amount of \$3,465.73 owed by the Applicant due to overpaid disability benefits by \$2,500.

After Board discussion, a **SUBSTITUTE MOTION** by Prevatt, **seconded** by Packard was made to grant the Applicant’s request to reduce the overpayment amount of \$3,465.73 owed by the Applicant due to overpaid disability benefits by \$2,500.

The **SUBSTITUTE MOTION** passed unanimously.

**DA-3: ADOPTION OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION IN THE MATTER OF THE APPLICATION OF JAMES B. MORELL FOR A RECALCULATED RETIREMENT ALLOWANCE (ON REMAND FROM THE LOS ANGELES COUNTY SUPERIOR COURT AFTER JUDGMENT ON PEREMPTORY WRIT OF MANDATE)**

**Recommendation:** Staff recommends that the Board adopt the proposed Findings of Fact, Conclusions of Law, and Decision, attached as Exhibit B to the Board’s materials, in the matter of The Application of James B. Morell for a Recalculated Retirement Allowance.

Ms. Ratto presented item DA-3.

Mr. Dewane asked that Ms. Ratto’s presentation of the background of the matter be added to these Minutes. Ms. Ratto’s remarks appear below:

Mr. Morell’s Application for a Recalculated Retirement Allowance was considered and decided by the Board at its December 13, 2021 meeting.

At the December 13 meeting, and in accordance with the Judgment and Writ issued by the Los Angeles Superior Court, the Board:

1. Set aside its October 18, 2018 decision wherein the Board denied Mr. Morell’s appeal. The grounds for the Board’s denial were “(a) that OCERS and Mr. Morell were bound by the 2002 Settlement Agreement and Judgment in the *In Re Retirement Cases*, and (b) that OCERS’ staff had calculated Mr. Morell’s retirement allowance in accordance with that Settlement Agreement and Judgment”.
2. After setting aside its decision from October 2018, on December 13, 2021, the Board

heard argument from Mr. Morell and OCERS' counsel, considered evidence submitted by both parties, and asked questions of both.

3. Following oral argument and questioning by the Board, the Board voted unanimously to **deny** the Application of James B. Morell for a Recalculated Retirement Allowance.

Further, at the December 13, 2021 Board meeting, after voting unanimously to deny the Application of Mr. Morell for a recalculated retirement allowance, the Board Chair directed OCERS Staff to prepare Proposed Findings of Fact, Conclusions of Law, and Decision for service on Mr. Morell by December 22, 2021, and further directed Mr. Morell to serve any submitted changes and objections by January 4, 2022. The Board Chair asked OCERS Staff to deliver both of these documents – the Proposed Findings of Fact, Conclusions of Law, and Decision and Mr. Morell's Changes and/or Objections—to the Board on or before January 7, 2022 for the Board's final consideration at the Board's meeting today. Mr. Morell stated at the December 13 meeting that he had no objection to this timeline or procedure for the Proposed Findings of Fact, Conclusions of Law, and Decision.

In accordance with the Board Chair's direction, on December 22, 2021, OCERS staff served on Mr. Morell Staff's preliminary Proposed Findings of Fact, Conclusions of Law, and Decision on the Applicant. That preliminary document was provided to the Board and it is attached to the Board materials as Exhibit C.

On January 4, 2022, Mr. Morell served on OCERS his Objections to the Proposed Findings of Fact, Conclusions of Law, and Decision. Mr. Morell's Objections were provided to the Board, and they are attached to the Board materials as Exhibit D.

OCERS staff reviewed Applicant's Objections, and revised the Proposed Findings of Fact, Conclusions of Law, and Decision to address some of Applicant's objections. The revisions are reflected in redline in the document attached as Exhibit A to the Board materials.

A clean copy of the **revised** Proposed Findings of Fact, Conclusions of Law, and Decision for the Board's consideration is attached as Exhibit B to the Board materials.

The task before the Board this morning is to adopt Findings of Fact, Conclusions of Law and Decision in this case to support the Board's determination in Mr. Morell's case made at the December 13<sup>th</sup> Board meeting and to support our Return on the Writ to be filed with to the Superior Court.

We are not here today to re-argue this case. In December, the Board heard this matter in accordance with the instructions given to the Board by the Superior Court and the Board rendered its decision. We are here today to adopt Findings and Conclusions that support the Board's decision.

Staff recommends the Board adopt the Findings of Fact, Conclusions of Law and Decision marked as Exhibit B.

**MOTION** by Dewane, **seconded** by Packard, to adopt the proposed Findings of Fact, Conclusions of Law, and Decision, attached as Exhibit B to the Board materials, in the matter of The Application of James B. Morell for a Recalculated Retirement Allowance.

Mr. Morell stated his arguments against staff recommendation.

The **MOTION** passed unanimously. A copy of the Findings of Fact, Conclusions of Law, and Decision adopted by the Board is attached to these Minutes.

**DA-4: FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION IN THE MATTERS OF THE BENEFIT APPEALS OF MEMBERS SZEWCZYK, ROBERT AND MORIKAWA, RODNEY**

**Recommendation:** In the *Matters of Robert Szewczyk and Rodney Morikawa*, Staff recommends the Board exercise its authority pursuant to subdivision (d) of section 31534 of the California Government Code and:

- (1) Set this matter for hearing before itself;
- (2) Accept the record before the referee, together with additional evidence, written briefing and argument from the parties in accordance with a schedule determined by the Board; and
- (3) Consider all such testimony, evidence, briefing and argument at a future meeting of the Board at which time the Board will decide the matter as if it had not been referred to the referee.

Ms. Ratto presented item DA-4.

Mr. Kalinski, attorney representing Mr. Szewczyk and Mr. Morikawa, requested that the Board not adopt staff recommendation and to instead adopt the hearing officer's recommended findings and decision.

**MOTION** by Prevatt, **seconded** by Packard to approve staff recommendation.

**SUBSTITUTE MOTION** by Oates, **seconded** by Packard, to send this item back to the hearing officer to consider new evidence.

After discussion, Mr. Oates, with the agreement of Mr. Packard, withdrew the **SUBSTITUTE MOTION**.

**SECOND SUBSTITUTE MOTION** by Oates, **seconded** by Packard to adopt the hearing officer's recommended findings and decision.

On roll call vote, the **SECOND SUBSTITUTE MOTION** failed, with 6 votes in favor and 2 votes against.

On the original **MOTION** by Prevatt, **seconded** by Packard, to approve staff's recommendation, the **MOTION** passed 7-1 in favor of the MOTION, with Mr. Oates voting "No."

Chair Eley directed staff to bring the item back to the Board for a hearing at the March 21, 2022 Board meeting, and approved the following briefing schedule:

Opening brief and additional evidence by OCERS: due February 8<sup>th</sup>  
Response brief and additional evidence by Mr. Kalinski: due March 1<sup>st</sup>  
OCERS reply to response brief: due March 8<sup>th</sup>

The Board recessed for break at 10:58 a.m.

The Board reconvened from break at 11:16 a.m.

The Board adjourned into closed session at 11:17 a.m.

**CLOSED SESSION**

**DA-5: MICHELLE WACHTER  
STAFF RECOMMENDATION –**

- (1) MOVE TO RESCIND BOARD ACTION ON AUGUST 19, 2019 REGARDING THE APPLICATION FOR DISABILITY RETIREMENT FILED BY MICHELLE WACHTER; AND**
- (2) REFER THE MATTER BACK TO THE HEARING OFFICER ON THE SOLE ISSUE OF PERMANENT INCAPACITY**

**Recommendation:** Staff recommends that the Board (1) rescind its prior action in this matter to consider new evidence; and (2) refer the matter back to the Hearing Officer on the sole issue of permanent incapacity, pursuant to Government Code section 31534(d).

The Board reconvened into open session at 11:47 a.m.

**OPEN SESSION**

**REPORT OF ACTIONS TAKEN IN CLOSED SESSION**

**DA-5: MICHELLE WACHTER  
STAFF RECOMMENDATION –**

- 1. MOVE TO RESCIND BOARD ACTION ON AUGUST 19, 2019 REGARDING THE APPLICATION FOR DISABILITY RETIREMENT FILED BY MICHELLE WACHTER; AND**
- 2. REFER THE MATTER BACK TO THE HEARING OFFICER ON THE SOLE ISSUE OF PERMANENT INCAPACITY**

Mr. Eley reported that the Board unanimously approved staff recommendation on item DA-5.

**ACTION ITEMS:**

- A-1 INDIVIDUAL ACTION ON ANY ITEM TRAILED FROM THE CONSENT AGENDA**  
None.
- A-2 AUDIT COMMITTEE – EXTERNAL AUDITOR CONTRACT AWARD**

*Presentation by Brenda Shott CPA, Assistant CEO Finance and Internal Operations, OCERS*

**Recommendation:** The Audit Committee recommends the Board of Retirement award a contract for financial auditor services to Moss Adams LLP, subject to satisfactory negotiation of terms.

Ms. Shott presented item A-2.

**MOTION** by Dewane, **seconded** by Packard, to award a contract for financial auditor services to Moss Adams LLP, subject to satisfactory negotiation of terms.

The **MOTION** passed unanimously.

**A-3 REINSTATEMENT OF EMERGENCY PAID SICK LEAVE (EPSL)**

*Presentation by Cynthia Hockless, Director of Human Resources, OCERS*

**Recommendation:**

Staff recommends that the Board of Retirement approve the reinstatement of Emergency Paid Sick Leave (EPSL) for Orange County Employees Retirement System (OCERS) Direct employees from December 31, 2021, through April 07, 2022. Approval and adoption of emergency leave practices will provide employees with compensation relief during COVID-19-related absences. The recommendation includes the following:

1. Authorize the Chief Executive Officer, or Designee, to administer a 2022 Emergency Paid Sick Leave Program effective December 31, 2021, to April 7, 2022, that provides employees up to 40 hours of paid sick leave for qualifying COVID-related absences. The use of this leave will be retroactively applied.
2. Authorize the Chief Executive Officer, the discretion to provide up to 40 additional hours of paid sick leave for qualifying COVID-related absences and to extend the program to June 30, 2022, in a manner consistent with combating the health pandemic.
3. Authorize the Chief Executive Officer, or Designee, after review by Counsel and notification to the Board, to administer future state and/or federal statutorily required leave programs in a manner consistent with the parameters approved by the Board for the health pandemic.

This recommendation mirrors the reinstatement of EPSL approved by the Orange County Board of Supervisors for County of Orange employees at their January 11, 2022, Board meeting.

Ms. Hockless presented item A-3.

**MOTION** by Tagaloo, **seconded** by Packard, to approve the reinstatement of Emergency Paid Sick Leave (EPSL) as outlined in the staff recommendation.

The **MOTION** passed unanimously.

Mr. Prevatt left the meeting at 12:01 p.m.

**INFORMATIONAL ITEMS**

**Presentations**

**I-1 DISCOVERY OF ERRONEOUS CALCULATION OF FINAL AVERAGE SALARY FOR FULL-TIME MEMBERS WITH LESS THAN THREE YEARS OCERS SERVICE AND PART-TIME MEMBERS**

*Presentation by Steve Delaney, Chief Executive Officer, OCERS*

Mr. Delaney presented item I-1 and described in detail the background to this item.

Mr. Delaney explained that OCERS inclusion of “Total Compensation” in Final Average Salary calculations for those with less than three years of service or as part time employees has been wrong for more than twenty years. There was no request for Board action at that time as staff needs to determine who may be impacted, with early results suggesting very few.

Mr. Delaney also stated that a formal process will be put in place to address Board Member questions in the future, while a review of all processes will begin as well.

**I-2 2021 OCERS INNOVATIONS AND PROCESS IMPROVEMENTS**

*Presentation by Steve Delaney, Chief Executive Officer, OCERS and the OCERS Team*

Noting that “continuous improvement” is foundational to OCERS culture, Mr. Delaney introduced item I-2. Then together with the Executive Management Team presented the annual Innovations and Process Improvement overview report.

**I-3 COVID-19 UPDATE**

*Presentation by Steve Delaney, Chief Executive Officer, OCERS*

Mr. Delaney presented the COVID-19 update and stated that OCERS plans to return to in-person work on a hybrid basis as of March 11. He also gave an update as to other pension systems’ return to work status.

**Written Reports**

No written reports were pulled for discussion.

**R-1 MEMBER MATERIALS DISTRIBUTED**

Written Report

Application Notices  
Death Notices

January 18, 2022  
January 18, 2022

**R-2 COMMITTEE MEETING MINUTES**

- 10-04-2021 Audit Committee Meeting Minutes

**R-3 CEO FUTURE AGENDAS AND 2022 OCERS BOARD WORK PLAN**

Written Report

- R-4 QUIET PERIOD – NON-INVESTMENT CONTRACTS**  
Written Report
- R-5 BOARD COMMUNICATIONS**  
Written Report
- R-6 2021 OCERS YEAR IN REVIEW: COMMUNICATION PLAN**  
Written Report
- R-7 DISABILITY RETIREMENT STATISTICS – 2021 REPORT**  
Written Report
- R-8 ANNUAL FORM 700 DESIGNATED FILERS LIST AND FACT SHEET**  
Written Report
- R-9 BOARD COMMUNICATIONS POLICY FACT SHEET**  
Written Report
- R-10 FOURTH QUARTER 2021 EDUCATION AND TRAVEL EXPENSE REPORT**  
Written Report
- R-11 OCERS TRUSTEE EDUCATION SUMMARY REPORT**  
Written Report
- R-12 2022 OCERS BOARD COMMITTEE ASSIGNMENTS**  
Written Report
- R-13 CONTRACT STATUS FOR NAMED SERVICE PROVIDERS**  
Written Report

**BOARD MEMBER COMMENTS**

N/A

**CIO COMMENTS**

Ms. Murphy gave an update on the Investment Markets. She also stated that OCERS 2021 calendar year returns will be in the neighborhood of 15% for the year.

**CHIEF EXECUTIVE OFFICER/STAFF COMMENTS**

Ms. Jenike stated that the approval of 2022 COLA will be brought to the Board at the February Board Meeting. She will however share the Segal letter providing the final anticipated COLA percentage with the Board as soon as it is received.

**COUNSEL COMMENTS**

Ms. Ratto reminded the Board that Form 700 would need to be completed by April 1.

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Orange County Employees Retirement System  
January 18, 2022  
Regular Board Meeting – Minutes

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The meeting **ADJOURNED** at 12:58 p.m.

Submitted by:

Approved by:

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Steve Delaney  
Secretary to the Board

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Frank Eley  
Chairman



BEFORE THE BOARD OF RETIREMENT OF  
ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

**FINDINGS OF FACTS, CONCLUSIONS OF LAW AND DECISION**

**In the Matter of the Application of James B. Morell,  
A Member of the Orange County Employees System  
For a Recalculated Retirement Allowance**

**I. FACTUAL BACKGROUND**

James B. Morell (“Applicant”) was employed by the Orange County Superior Court as a research attorney for approximately 21 years, from August 1992 to February 2014. Morell became a member of the Orange County Employees Retirement System (“OCERS”) on October 14, 1994, and retired on February 21, 2014.

When calculating Applicant’s final average salary, OCERS excluded from his compensation his Optional Benefit Plan (“OBP”) payments he received from his employer under the Orange County Superior Court’s IRS Section 125 Plan. The Orange County Superior Court’s IRS Section 125 Plan provided for \$3,500.00 in annual OBP benefits that can be allocated for certain reimbursements or taken in taxable cash.

Applicant contended that the OBP payments he received in varying amounts in his final compensation period should be included as “compensation earnable” for purposes of calculating his final average salary and ultimate retirement allowance. Specifically, Applicant claimed that under the IRS 125 Plan’s OBP program, he received non-taxable health/dental care reimbursement payments in the total amounts of \$2,500.00 in 2011, \$700.00 in 2012, \$2,500.00 in 2013, and \$1,100.00 in early 2014. The remainder of the \$3,500 benefit was paid as taxable cash (\$1,000.00 in 2011, \$2,800.00 in 2012, \$1,000.00 in 2013, and \$2,400.00 in 2014).

Upon his retirement in February 2014, the OCERS’ staff excluded the OBP payments received by Applicant from his retirement benefits calculations.

**II. PROCEDURAL BACKGROUND**

This matter began with Applicant’s appeal to the OCERS Director of Member Services and CEO. Appellant appealed the OCERS’ staff’s determination to exclude his OBP benefits from the calculation of his retirement allowance. Both the Director of Member Services and the CEO upheld OCERS’ staff’s determination, and Applicant then sought review of the determination by the OCERS’ Board of Retirement (“Board”).

On August 17, 2015, the Board denied Applicant’s request to include his OBP benefits in his compensation earnable used to calculate his final average salary and retirement allowance.

Applicant timely requested an administrative hearing to challenge the Board's decision, and an administrative hearing was held on May 5, 2017, before Hearing Officer Snider.

On November 29, 2017, Hearing Officer Snider issued his Findings of Fact, Conclusions of Law, and Recommended Decision. He recommended that "the computation of [Applicant's] retirement allowance be maintained as accurate in light of the 2002 agreement that settled the litigation between OCERS and its membership class and associations" in the *In re Retirement Cases* following the decision in *Ventura County Deputy Sheriff's Assn. v. Board of Retirement* (1997) 16 Cal.4th 483 ("2002 Settlement Agreement"). He further recommended that "the Board reexamine the portion of the settlement that excludes from pensionability flexible benefits received by employees as taxable cash, and that the Board consider pursuing an amendment of the Superior Court judgment on the basis that it precludes taxable cash received under the Optional Benefit Plan from counting in the determination of final compensation."

The Hearing Officer's recommendations were presented to the Board at its August 20, 2018 meeting. On August 20, 2018, the Board voted to set aside the Hearing Officer's recommendations and thereafter denied Applicant's appeal on the grounds "(a) that OCERS and [Applicant were] bound by the Settlement Agreement and Judgment, and (b) that OCERS' staff did calculate [Applicant's] retirement allowance in accordance with the Settlement Agreement and Judgment." Based on its determination in reliance upon the 2002 Settlement Agreement, the Board issued its Findings of Fact, Conclusions of Law and Decision dated October 18, 2018.

On January 15, 2019, Applicant filed a Petition pursuant to Code of Civil Procedure section 1094.5 in the Orange County Superior Court to challenge the Board's administrative decision to apply the 2002 Settlement Agreement to exclude the OBP benefits from the base compensation upon which Applicant's retirement benefits were calculated.<sup>1</sup> On August 21, 2020, the Court denied the writ petition on the grounds that the terms of the 2002 Settlement Agreement that excluded OBP payments from pensionable treatment applied to Applicant; and held that OCERS had properly calculated Applicant's retirement benefits under the agreement.

Applicant timely moved for reconsideration of the court's ruling on the writ petition, based in part on new case authority, *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032, which held in part that a county retirement board's settlement agreement must comport with the terms of the County Employee Retirement Law of 1973 ("CERL"). On reconsideration, the Court granted, in part, the writ petition due to the fact that the Board had only determined that Applicant's OBP benefits were not pensionable under the 2002 Settlement Agreement, but had not evaluated whether OBP benefits were otherwise pensionable under the CERL. Accordingly, the Court issued a Writ directing the Board to set aside its decision dated October 18, 2018, and to reconsider the case on remand consistent with the Court's Judgment.

The Court's Judgment and Writ instructed the Board that on remand "the Board shall not limit the issues for consideration to (1) whether OCERS and [Applicant] were bound by the 2002

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<sup>1</sup> On June 28, 2019, the Orange County Superior Court transferred the matter to Los Angeles Superior Court pursuant to Government Code section 69740, subdivision (b).

Settlement Agreement and the Judgment entered thereon, and (2) whether [Applicant's] retirement allowance had been calculated in accordance with the Settlement Agreement and Judgment. Board shall decide [Applicant's] contentions that OCERS improperly excluded OBP benefits from the calculation of his final compensation separate and apart from the Settlement Agreement.”

Thus, in the present administrative proceeding on remand, the issue before the Board is whether the exclusion of OBP benefits from “compensation earnable” was valid under the CERL at the time Applicant retired in 2014, notwithstanding the 2002 Settlement Agreement.

### **III. REMAND PROCEEDING**

On September 20, 2021, OCERS provided notice to Applicant: (1) that his matter would be heard on remand by the Board at its regularly scheduled public meeting on December 13, 2021, (2) of the briefing schedule wherein he and OCERS would exchange Opening Briefs and Evidence by October 21, 2021 and Response Briefs by November 18, 2021, and (3) that each party would have 20 minutes to address the Board in the remand proceeding.

On October 13, 2021, Applicant and OCERS stipulated to the Administrative Record on remand, which is attached hereto as Exhibit 1. The stipulated Administrative Record on Remand included: the prior administrative record, the Judgment dated July 16, 2021, the Preemptory Writ of Mandate dated July 16, 2021, and any document previously filed in Case No. 30-2019-01043847, which was submitted by October 21, 2021 in this remand proceeding in support of a citation in either the Applicant's or OCERS's Opening Brief.

On October 21, 2021, the parties exchanged their respective Opening Briefs and Evidence. On November 18, 2021, OCERS served an Amended Opening Brief and Amended Declaration to cure citation errors to the administrative record. That same day on November 18, 2021, the parties exchanged their Response Briefs. On November 19, 2021, OCERS' staff provided the Board with the electronic copies of the aforementioned pleadings, declarations and evidence attached thereto, and the prior Administrative Record consisting of approximately 2217 pages of Bates stamped documents.

On November 22, 2021, Applicant was given timely notice that the matter would be considered as Agenda Item DA-2 at the Board's meeting on December 13, 2021, and the Board duly notice the meeting and Agenda Item DA-2, as required by law.

On November 22, 2021, Applicant was given notice that both he and OCERS' counsel would each have a maximum of twenty (20) minutes to present oral argument to the Board. Applicant was also given notice of the staff's recommendation to the Board. Staff recommended that the Board; (1) set aside its prior administrative decision of October 18, 2018 in this matter, and (2) reconsider the Application of James B. Morell for a Recalculated Retirement Allowance in light of the Superior Court's Judgment and Writ, wherein the Board is directed by the Court to decide the Applicant's contentions that OCERS improperly excluded Optional Benefit Plan benefits from the calculation of his final compensation separate and apart from the 2002

Settlement Agreement in *In re Retirement Cases*, Judicial Council Coordination Proceeding No., 4049 in San Francisco County Superior Court.

In advance of the December 13, 2021 Board meeting, the Board received and reviewed the pleadings and evidence mentioned above and the electronic copy of the Bates stamped Administrative Record.

On December 13, 2021, the Board, by unanimous vote, set aside its October 18, 2018, decision wherein it denied Applicant's appeal on the grounds "(a) that OCERS and [Applicant were] bound by the Settlement Agreement and Judgment, and (b) that OCERS' staff did calculate [Applicant's] retirement allowance in accordance with the Settlement Agreement and Judgment."

After review and consideration of the pleadings, evidence and oral argument by both Applicant and OCERS' Counsel, on December 13, 2021, the Board voted unanimously to deny Applicant's Application for a recalculated retirement allowance. The Board further directed staff to prepare and serve on Applicant proposed Findings of Fact, Conclusions of Law and Decision by December 22, 2021. The Board further gave Applicant until January 4, 2021, to submit suggested changes and/or objections to the proposed Findings of Fact, Conclusions of Law and Decision. The proposed Findings of Fact, Conclusions of Law and Decision along with Applicant's suggested changes and/or objections will be brought before the Board for its final consideration at its next regularly scheduled public meeting on January 18, 2022.

The audio and video recording of the Board proceedings conducted in this matter on December 13, 2021, as well as the transcript prepared by the Court Reporter present during the December 13, 2021 Board meeting are incorporated herein by this reference and are made part of the administrative record of this matter.

#### **IV. ISSUE**

The issue the Board decided was whether the exclusion of OBP benefits from Applicant's "compensation earnable" was valid under the CERL at the time Applicant retired in 2014, notwithstanding the 2002 Settlement Agreement applicable to OCERS.

#### **V. SUBMITTED EVIDENCE**

Each party submitted evidence attached to their Opening and Response Briefs. In addition, the Administrative Record consisted of approximately 2217 pages of documents Bates Stamped JAMES\_MORELL 0001- 2217. Attached hereto as Exhibit 1 is the Stipulation Re: Administrative Record on Remand and the index to the Administrative Record that was electronically submitted to the Board is attached hereto as Exhibit 2.

#### **VI. FINDINGS OF FACT**

1. The Board finds the facts stated in Sections I through V, inclusive, above.

2. On June 15, 1990, the Legislature enacted Government Code section 31460.1. Section 31460.1 provided: “‘Compensation’ *shall not include* employer payments, including *cash payments*, made to, or on behalf of, their employees who have elected to participate *in a flexible benefits program*, where those payments reflect amounts that exceeds [*sic*] ... their employees’ salaries. [¶] This section shall not be operative in any county until the time the board of supervisors shall, by resolution adopted by a majority vote, makes [*sic*] this section applicable in the county.”
3. On December 18, 1990, the Orange County Board of Supervisors (“County”), by a majority vote, adopted Resolution 90-1551 wherein it adopted Government Code § 31460.1 of the County Employees Retirement Law of 1937 (“CERL”) effective in Orange County as of January 1, 1991. The Orange County Board of Supervisors has not repealed Resolution 90-1551.
4. On May 11, 1992, the Legislature repealed Section 31460.1 by Senate Bill No. 193 (Stats. 1992, ch. 45, §1, p. 58.) (“SB 193”). SB 193 contained a savings clause: “Sec. 2 - Nothing in this act is intended to, or shall be construed to, affect the validity of any action taken by a county pursuant to Section 31460.1 of the Government Code, prior to the effective date of this act.” (Gov. Code, § 31460.1, notes.)
5. On February 9, 1998, the Board adopted Resolution 98-001, which excluded flexible benefits provided in-kind and paid in cash from compensation earnable based, in part, upon the County’s Resolutions 90-1551 which excluded the same from compensation.
6. Resolution 98-001, states in relevant part:
 

Elements to be Excluded From “Compensation Earnable”.

Remuneration or other value to the employee neither earned or payable in cash to the employee during the final compensation period for working the ordinary time required of other employees in the same grade/class shall be excluded from “compensation earnable”, including but not limited to the following items, and others substantially similar to them:

. . .

Flexible Benefits (“Cafeteria Plan”) provided in-kind

Flexible Benefits (“Cafeteria Plan”) paid in cash to the extent paid to members retiring on and after January 1, 1991”
7. Applicant began working for the Orange County Superior Court as a research attorney on August 13, 1992. He became a member of OCERS on October 14, 1994.
8. During his employment as a research attorney, Appellant participated in the Orange County Superior Court’s IRS 125 Plan that provided for flexible benefits under the OBP program.

9. The Orange County Superior Court's IRS 125 Plan is applicable only if it is an elective plan under the IRS rules.
10. The Orange County Superior Court's Section 125 Plan provides that a "Participant" is any "Eligible Employee who elects to become a participant as provided in Section 2."
11. Section 2.2 of the Section 125 Plan, entitled "**Application to Participate**" states:

Any Eligible Employees **shall, during the applicable Open Enrollment Period,** complete and submit to the Administrator Enrollment Documentation. The election made pursuant to the Enrollment Documentation shall be irrevocable until the end of the applicable Contribution Period unless the Participant is entitled to change his or her elections pursuant to Section 4.6 hereof."

A Participant shall not continue participating in the Plan for subsequent Contribution Periods unless he or she completes and submits new Enrollment Documentation during each Open Enrollment Period.
12. The Orange County Superior Court's IRS 125 Plan's OBP program provided that the employer would "credit OBP Eligible Employees with a specific amount of OBP Dollars each Plan Year." The eligible employee can elect to allocate his OBP Dollars in the amount of \$3,500 to pay for certain benefits or to receive it as a taxable lump sum cash payment.
13. The Orange County Superior Court's IRS 125 Plan's OBP program in paragraph 1.21 provided that : "Health Care Reimbursement Account means the account established for a Participant pursuant to this Plan to which part of his or her Salary Redirection and/or OBP Dollars may be credited and from which all allowable Health Care Expenses may be reimbursed. Such Health Care Reimbursement Account is not a real account, but is established and maintained for bookkeeping purposes only."
14. The 2011 and 2013 Orange County Superior Court Personnel Policies and Regulations provided that "[a]ny portion of the optional benefit not incurred within the plan period shall remain the Court or County funds."
15. The 2011 and 2013 Orange County Superior Court Personnel Policies and Regulations provided that "[t]he amount in a Participant's Health Care Reimbursement Account as of the end of any Contribution Period (and after the processing of all claims for each Contributions Period pursuant to Section 8 hereof) shall be forfeited to the Employer and deposited into the Employer's benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason."

16. On January 27, 2014, Applicant filed his application for retirement with OCERS, with a retirement date of February 21, 2014.
17. Upon receipt of Applicant's retirement application, OCERS calculated his retirement allowance based on the following statutory formula: Final Compensation X /Years of Service X Retirement Formula (Plan J/2.7% @ 55/\$31676.19).
18. Pursuant to Government Code section 31462, subd. (a), the Applicant's three year measuring period for the purpose of calculating his retirement allowance is February 7, 2011 to February 6, 2014.
19. During his measuring period, i.e., February 7, 2011 to February 6, 2014, the Applicant elected to allocate his OBP Dollars to a Health Care Reimbursement Account and to taxable lump sum cash payments.
20. During his measuring period, i.e., February 7, 2011 to February 6, 2014, Applicant elected to allocate a portion of the \$3,500.00 OBP Dollars to the non-taxable Health Care Reimbursement Account in the following amounts: \$2,500.00 in 2011, \$700.00 in 2012, \$2,500.00 in 2013, and \$1,100.00 in early 2014.
21. The Applicant provided evidence of his elected allocation of his OBP Dollars during his measuring period, but he failed to submit documentary evidence to establish that he actually received any reimbursement from the Health Care Reimbursement Account. He also failed to present evidence of the date(s) and amount(s) of any alleged reimbursements during the relevant measuring period. Thus, he has failed to establish that the OBP Dollars he allocated to the Health Care Reimbursement Account were not forfeited.
22. During his measuring period, i.e., February 7, 2011 to February 6, 2014, Applicant elected to allocate a portion of the \$3,500.00 OBP Dollars to a taxable lump sum payment in the following amounts: \$1,000.00 in 2011, \$2,800.00 in 2012, \$1,000.00 in 2013, and \$2,400.00 in 2014.
23. Applicant did not pay any employee contributions to fund the cost of paying for that portion of his retirement allowance that would be derived from receipt of his claimed OBP benefits.
24. Upon the Applicant's retirement on February 21, 2014, OCERS' staff excluded the OBP benefits received by the Applicant from compensation and compensation earnable when calculating his retirement allowance.
25. The OCERS staff properly excluded Applicant's OBP benefits under the CERL at the time of his retirement and properly applied the OCERS Board's Resolution 98-001 in its calculation of the Applicant's retirement allowance.

26. To the extent any of the foregoing Findings of Fact are Conclusions of Law, the Board so concludes.

## **VII. CONCLUSIONS OF LAW**

1. The Orange County Board of Supervisor's Resolution 90-1551 made CERL section 31460.1 operative as a carve-out effective in Orange County as of January 1, 1991, thereby excluding from the definition of "compensation" (under Government Code § 31460) payments made by an employer to an employee or on behalf of an employee, for that employee's participation in a flexible benefit plan, such as the OBP, regardless of whether paid in cash.
2. The savings clause in SB 193 is part of the CERL, and was and continues to be valid and enforceable.
3. In including the saving clause in SB 193, the Legislature intended to preserve Section 31460.1 in counties where the Board of Supervisors adopted that carve-out by resolution adopted by a majority vote.
4. Pursuant to SB 193's saving clause, the Orange County Board of Supervisor's Resolution 90-1551, as action taken by the county prior to May 11, 1992, remains valid and continues the validity of Section 31460.1 currently in the County of Orange.
5. By adopting Section 31460.1 by Resolution 90-1551, the County precluded the OCERS Board from including flexible benefit payments such as OBP benefits in a member's compensation, compensation earnable and final average salary.
6. The Applicant elected to participate in the OBP program by allocating the \$ 3,500 OBP Dollars to the Health Care Reimbursement Account and to lump sum taxable cash payments each year during his measuring period, i.e., between February 7, 2011 and February 6, 2014.
7. OCERS' staff's exclusion of OBP benefits (both for health and dental reimbursements and taxable cash payments within the three year measuring period) from the Applicant's compensation and compensation earnable complied with the CERL at the time the Applicant retired in 2014, according to Section 31460.1, the County's Resolution 90-1551, SB 193's savings clause, and the Board's Resolution 98-001 (which is based in part on County's Resolution 90-1551), notwithstanding the 2002 Settlement Agreement.
8. Since the Applicant received the \$1,000 taxable lump sum payment on January 7, 2011, outside the three year measuring period between February 7, 2011 and February 6, 2014, this amount cannot be included in calculating his final compensation.



9. To the extent any of the foregoing Conclusions of Law are Findings of Fact, the Board so finds.

**VIII. DECISION**

The Application of James B. Morell for a recalculated retirement allowance is DENIED.

DATED: 1/20/2022 | 5:57 PM PST

DocuSigned by:  
*Frank Eley*  
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\_\_\_\_\_  
Frank Eley, Chair of the Board of Retirement



## Memorandum

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**DATE:** February 22, 2022  
**TO:** Members of the Board  
**FROM:** Gina M. Ratto, General Counsel  
**SUBJECT:** **BOARD FINDINGS PURSUANT TO GOVERNMENT CODE § 54953, AS AMENDED BY AB 361, AND ADOPTION OF BOARD RESOLUTION 2022-02**

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### Recommendation

That the Board:

- (1) Make the following findings pursuant to Government Code section 54953, as amended by AB 361;
  - a. The Board has reconsidered the circumstances of the state of emergency resulting from the COVID-19 pandemic; and
  - b. The Board has determined that the following circumstances exist:
    - i. The state of emergency continues to directly impact the ability of the members of the Board to meet safely in person; and
    - ii. State or local officials continue to impose or recommend measures to promote social distancing.

and
- (2) Adopt Board of Retirement Resolution 2022-02 to reflect such findings.

### Background/Discussion

In March of 2020, amid rising concern surrounding the spread of COVID-19 throughout communities in the state, Governor Newsom declared a state of emergency and issued a series of Executive Orders that modified certain requirements of the Brown Act. The orders waived several requirements for meetings conducted by teleconference, including the requirement that each teleconference location be accessible to the public, that agendas are posted at all teleconference locations, and that each teleconference location be accessible to the public.

On June 11, 2021, the Governor issued Executive Order N-08-21, rescinding the aforementioned modifications of the Brown Act effective September 30, 2021. On September 16, 2021, Assembly Bill 361 was signed into law as urgency legislation. AB 361 provides local agencies with the ability to meet remotely during proclaimed states of emergency under modifications to the Brown Act that are similar in many ways to the rules and procedures established by the Governor's Executive Orders. On September 20, 2021, the Governor signed an executive order waiving the application of AB 361 until October 1, 2021.

AB 361 amended the teleconference rules of the Brown Act and added new provisions for abbreviated teleconferencing procedures that deviate from the traditional teleconferencing procedures during a proclaimed state of emergency, subject to certain requirements specified in the statute.

More specifically, AB 361 amended the Brown Act to add subdivision (e) to Gov't Code § 54953. This subdivision describes the circumstances and procedures for adopting abbreviated teleconferencing procedures during a proclaimed state of emergency, such as the current continuing COVID-19 pandemic. Subdivision (e)(1) of the statute provides the circumstances and requirements under which a local legislative body may adopt the abbreviated teleconferencing procedures. Once a local legislative body meets the requirements for adopting teleconferencing procedures, subdivision (e)(2) provides the requirements for the abbreviated teleconferencing procedures that the local legislative body must implement.

#### **Adopting Abbreviated Teleconferencing Procedures Under AB 361**

A local legislative body, such as OCERS and its standing committees, may elect to use the abbreviated teleconferencing procedures under AB 361 where a state of emergency has been formally proclaimed, ***provided that:***

- State or local officials have imposed or recommended measures to promote social distancing at the time the legislative body holds the meeting (Gov't Code § 54953(e)(1)(A)); ***or***
- The legislative body holds a meeting for the first time for the purpose of determining by majority vote whether, as a result of proclaimed state of emergency, meeting in person would present imminent risks to the health and safety of attendees (Gov't Code § 54953(e)(1)(B)), ***or***
- The legislative body has determined (per previous bullet) that, as a result of the proclaimed state of emergency, meeting in person would continue to present imminent risks to the health or safety of attendees (Gov't Code § 54953(e)(1)(C)).

AB 361 further imposes on local legislative bodies a duty to make factual findings to justify the election to continue to use the abbreviated teleconferencing procedures. (Gov't Code § 54953(e)(3).) Local legislative bodies who wish to consider using the AB 361 abbreviated teleconferencing procedures must make the following factual findings within 30 days after teleconferencing for the first time after the expiration of Executive Order N-29-20, and every 30 days thereafter:

- 1) The legislative body has reconsidered the circumstances of the state of emergency; and
- 2) One or both of the following circumstances exist:
  - a. The state of emergency continues to directly impact the ability of the members to meet safely in person.
  - b. State or local officials continue to impose or recommend measures to promote social distancing.

Until January 1, 2024, public retirement boards and their Boards must reconsider the aforementioned circumstances and make factual findings by majority vote that the circumstances continue to exist in order for the local legislative body to elect and continue to use the abbreviated teleconferencing procedures. (Note that

AB 361 was designed not only to deal with COVID-19 but also with other types of states of emergency, as defined in Gov't Code § 8625 of the California Emergency State Services Act.)

On January 18, 2021, the Board adopted Resolution 2022-01 to reflect the findings made by the Board pursuant to AB 361. **Staff recommends the Board renew its findings and adopt Resolution 2022-02 in order for the Board and its committees to continue to meet by teleconference.**

### **Reconsideration of the State of Emergency and Requisite Findings**

A state of emergency continues to directly impact the ability of the members of the Board and its committees to meet safely in person and, as more fully set forth below, both state and local officials continue to impose or recommend measures to promote social distancing.

The COVID-19 Prevention Emergency Temporary Standards issued by the California Division of Occupational Safety and Health (Cal/OSHA) (codified at 8 C.C.R. § 3205) recommends physical distancing and requires it under certain circumstances. For example, the regulations require employees not wearing a face covering to be at least six feet apart from all other persons unless the unmasked employee is either fully vaccinated or tested at least weekly for COVID-19. In addition, six feet of distance between people is recommended even when outdoors for those who are unmasked and unvaccinated. On December 16, the Occupational Safety and Health Standards Board readopted the Cal/OSHA COVID-19 Prevention Emergency Temporary Standards for the second time. The draft emergency standards include important revisions to make the workplace rules consistent with the latest requirements and recommendations from the California Department of Public Health (CDPH). The revised emergency standards take effect on January 14, 2022; however, as of the date of this memorandum, the final revised emergency standards had not yet been published. A fact sheet about the revised emergency standards is attached to the Resolution.

In addition, OSHA has issued guidance on mitigating and preventing the spread of COVID-19 in the workplace that recommends physical distancing in all communal work areas for unvaccinated and otherwise at-risk workers: "[a] **key way to protect such workers is to physically distance** them from other such people (workers or customers) – generally **at least 6 feet of distance is recommended**, although this is not a guarantee of safety, especially in enclosed or poorly ventilated spaces." (Emphasis added.)

Moreover, the County of Orange Health Officer's "Orders and Strong Recommendations" (revised January 14, 2022) states at page 17 that, "[i]n general, the older a person is, the more health conditions a person has, and the more severe the conditions, the more important it is to take preventive measures for COVID-19 such as getting vaccinated, **social distancing** and wearing a mask when around people who don't live in the same household..." (emphasis added). The Health Officer also recognizes, at page 20 of the "Orders and Strong Recommendations", the Center for Disease Control's admonition that anyone infected with COVID-19 can spread it even if they do not have symptoms; and that "the current consensus among public health officials for slowing down the transmission of and avoiding contracting COVID-19 is for **unvaccinated persons to avoid gathering and practice social distancing**, frequently wash hands with soap, wearing face covering and get vaccinated." (Emphasis added.)

Based on the foregoing, staff recommends the Board find that the state of emergency continues to directly impact the ability of the members of the Board to meet safely in person, and that state and local officials continue to impose or recommend measures to promote social distancing. Staff further recommends the Board adopt the attached Resolution 2022-02 to memorialize such findings.

Attachments

**Submitted by:**

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Gina M. Ratto  
General Counsel

**OCERS BOARD OF RETIREMENT  
RESOLUTION NO. 2022-02**

**RESOLUTION OF THE BOARD OF THE ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM:**

- **RATIFYING (1) THE PROCLAMATION OF A LOCAL HEALTH EMERGENCY BY THE COUNTY OF ORANGE HEALTH OFFICER ON FEBRUARY 26, 2020; (2) THE PROCLAMATION OF A LOCAL EMERGENCY BY THE CHAIRWOMAN OF THE ORANGE COUNTY BOARD OF SUPERVISORS ON FEBRUARY 26, 2020; (3) RESOLUTIONS NO. 20-011 AND 20-012 OF THE ORANGE COUNTY BOARD OF SUPERVISORS RATIFYING THE LOCAL HEALTH EMERGENCY AND THE LOCAL EMERGENCY; AND (4) THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR NEWSOM ON MARCH 4, 2020; AND**
- **AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE BOARD AND ITS COMMITTEES THROUGH MARCH 21, 2022, PURSUANT TO BROWN ACT PROVISIONS.**

WHEREAS, the Board of the Orange County Employees Retirement System (OCERS Board) is a legislative body under Government Code section 54952; and

WHEREAS, OCERS is committed to preserving and nurturing public access and participation in meetings of the OCERS Board and its committees; and

WHEREAS, all meetings of the OCERS Board and its committees are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and watch the OCERS Board and its committees conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), makes provisions for remote teleconferencing participation in meetings by members of a legislative body without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition is that a State of Emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, a proclamation is made when there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the geographical boundaries within which the OCERS Board and its committees hold their meetings, caused by natural, technological, or human-caused disasters; and

WHEREAS, it is further required that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, such conditions now exist in Orange County, specifically, a Local Health Emergency based on an imminent and proximate threat to public health from the introduction of COVID-19 in Orange County

was declared by the County of Orange Health Officer on February 26, 2020; a Local Emergency based on the imminent and proximate threat to public health from the introduction of COVID-19 that created conditions of extreme peril to the safety of persons and property within the territorial limits of Orange County was proclaimed by the Chairwoman of the Board of Supervisors on February 26, 2020; Resolutions No. 20-011 and No. 20-012 of the Orange County Board of Supervisors were adopted on March 2, 2020, ratifying the Local Health Emergency and Local Emergency; and a State of Emergency was proclaimed by Governor Newsom for the State of California on March 4, 2020 based on an outbreak of respiratory illness due to COVID-19; and

WHEREAS, the California Division of Occupational Safety and Health has issued COVID-19 prevention Emergency Temporary Standards requiring any employee not wearing a face covering to be at least six feet apart from all other persons unless the unmasked employee is either fully vaccinated or tested at least weekly for COVID-19; and

WHEREAS, the County of Orange Health Officer's Orders and Strong Recommendations, last revised on January 13, 2022, state that the current consensus among public health officials for slowing down the transmission of and avoiding contracting COVID-19 is for unvaccinated persons to avoid gathering and practice social distancing; and

WHEREAS, the CDC currently recommends that organizations prioritize COVID-19 prevention strategies for indoor settings, and that multiple interventions, including maintaining physical distance and avoiding crowds, should be used concurrently to reduce the spread of disease; and

WHEREAS, the OCERS Board does hereby find that the COVID-19 pandemic has caused, and will continue to cause, conditions of peril to the safety of persons that are likely to be beyond the control of services, personnel, equipment, and facilities of OCERS; and

WHEREAS, in making the aforementioned finding, the OCERS Board acknowledges the proclamation of State of Emergency by the Governor of the State of California; the proclamation of Local Health Emergency by the County of Orange Health Officer; the proclamation of a Local Emergency by the Chairwoman of the Orange County Board of Supervisors; and the ratification of the Local Health Emergency and Local Emergency by the Orange County Board of Supervisors; as well as CalOSHA's prevention Emergency Temporary Standards requiring any employee not wearing a face covering to be at least six feet apart from all other persons unless the unmasked employee is either fully vaccinated or tested at least weekly for COVID-19; the County of Orange Health Officer's Orders and Strong Recommendations for unvaccinated persons to avoid gathering and practice social distancing; and the CDC's recommendation for maintaining physical distance and avoiding crowds; and

WHEREAS, as a consequence of the State of Emergency, Local Health Emergency and Local Emergency, the OCERS Board does hereby find that conditions exist to enable the OCERS Board and its committees to conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that the OCERS Board and its committees will comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

WHEREAS, members of the public who wish to observe or participate in the meeting may do so via the Zoom application or via telephone, as explained in the agenda for the meeting posted on the OCERS' website and at its business office location at least 72 hours prior to the meeting.

NOW, THEREFORE, THE OCERS BOARD DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Acknowledgement of Proclamation of State and Local Emergency. The OCERS Board hereby acknowledges that a State of Emergency has been proclaimed by the Governor of the State of California effective March 4, 2020; that a Local Health Emergency has been proclaimed by the Orange County Health Officer on February 26, 2020; that a Local Emergency has been proclaimed by the Chairwoman of the Board of Supervisors on February 26, 2020; and that the Local Health Emergency and Local Emergency were ratified by the Orange County Board of Supervisors on March 2, 2020, all of which continue to exist within the geographical boundaries of the territory within which the OCERS Board and its committees hold meetings to conduct business.

Section 3. Determination Regarding Health and Safety Need to Continue Teleconferencing. The OCERS Board finds that the State of Emergency directly impacts the ability of the OCERS Board, its committees, members and staff to meet safely in person, and that state or local officials continue to impose or recommend measures to promote social distancing.

Section 4. Remote Teleconference Meetings. The staff and the OCERS Board and each of its committees are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

Section 5. Effective Date of Resolution. This Resolution will take effect immediately upon its adoption and shall be effective until the earlier of March 21, 2022, or such time the OCERS Board adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the OCERS Board and its committees may continue to meet by teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

PASSED AND ADOPTED by the Board of the Orange County Employees Retirement System this 22nd day of February, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:



**Assembly Bill No. 361**

**CHAPTER 165**

An act to add and repeal Section 89305.6 of the Education Code, and to amend, repeal, and add Section 54953 of, and to add and repeal Section 11133 of, the Government Code, relating to open meetings, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 2021. Filed with Secretary of State September 16, 2021.]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 361, Robert Rivas. Open meetings: state and local agencies: teleconferences.

(1) Existing law, the Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate. The act contains specified provisions regarding the timelines for posting an agenda and providing for the ability of the public to directly address the legislative body on any item of interest to the public. The act generally requires all regular and special meetings of the legislative body be held within the boundaries of the territory over which the local agency exercises jurisdiction, subject to certain exceptions. The act allows for meetings to occur via teleconferencing subject to certain requirements, particularly that the legislative body notice each teleconference location of each member that will be participating in the public meeting, that each teleconference location be accessible to the public, that members of the public be allowed to address the legislative body at each teleconference location, that the legislative body post an agenda at each teleconference location, and that at least a quorum of the legislative body participate from locations within the boundaries of the local agency's jurisdiction. The act provides an exemption to the jurisdictional requirement for health authorities, as defined. The act authorizes the district attorney or any interested person, subject to certain provisions, to commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that specified actions taken by a legislative body are null and void.

Existing law, the California Emergency Services Act, authorizes the Governor, or the Director of Emergency Services when the governor is inaccessible, to proclaim a state of emergency under specified circumstances.

Executive Order No. N-29-20 suspends the Ralph M. Brown Act's requirements for teleconferencing during the COVID-19 pandemic provided that notice and accessibility requirements are met, the public members are allowed to observe and address the legislative body at the meeting, and that a legislative body of a local agency has a procedure for receiving and swiftly

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resolving requests for reasonable accommodation for individuals with disabilities, as specified.

This bill, until January 1, 2024, would authorize a local agency to use teleconferencing without complying with the teleconferencing requirements imposed by the Ralph M. Brown Act when a legislative body of a local agency holds a meeting during a declared state of emergency, as that term is defined, when state or local health officials have imposed or recommended measures to promote social distancing, during a proclaimed state of emergency held for the purpose of determining, by majority vote, whether meeting in person would present imminent risks to the health or safety of attendees, and during a proclaimed state of emergency when the legislative body has determined that meeting in person would present imminent risks to the health or safety of attendees, as provided.

This bill would require legislative bodies that hold teleconferenced meetings under these abbreviated teleconferencing procedures to give notice of the meeting and post agendas, as described, to allow members of the public to access the meeting and address the legislative body, to give notice of the means by which members of the public may access the meeting and offer public comment, including an opportunity for all persons to attend via a call-in option or an internet-based service option, and to conduct the meeting in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body. The bill would require the legislative body to take no further action on agenda items when there is a disruption which prevents the public agency from broadcasting the meeting, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments, until public access is restored. The bill would specify that actions taken during the disruption are subject to challenge proceedings, as specified.

This bill would prohibit the legislative body from requiring public comments to be submitted in advance of the meeting and would specify that the legislative body must provide an opportunity for the public to address the legislative body and offer comment in real time. The bill would prohibit the legislative body from closing the public comment period and the opportunity to register to provide public comment, until the public comment period has elapsed or until a reasonable amount of time has elapsed, as specified. When there is a continuing state of emergency, or when state or local officials have imposed or recommended measures to promote social distancing, the bill would require a legislative body to make specified findings not later than 30 days after the first teleconferenced meeting pursuant to these provisions, and to make those findings every 30 days thereafter, in order to continue to meet under these abbreviated teleconferencing procedures.

Existing law prohibits a legislative body from requiring, as a condition to attend a meeting, a person to register the person's name, or to provide other information, or to fulfill any condition precedent to the person's attendance.

This bill would exclude from that prohibition, a registration requirement imposed by a third-party internet website or other online platform not under the control of the legislative body.

(2) Existing law, the Bagley-Keene Open Meeting Act, requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend any meeting of a state body. The act requires at least one member of the state body to be physically present at the location specified in the notice of the meeting.

The Governor's Executive Order No. N-29-20 suspends the requirements of the Bagley-Keene Open Meeting Act for teleconferencing during the COVID-19 pandemic, provided that notice and accessibility requirements are met, the public members are allowed to observe and address the state body at the meeting, and that a state body has a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, as specified.

This bill, until January 31, 2022, would authorize, subject to specified notice and accessibility requirements, a state body to hold public meetings through teleconferencing and to make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the state body. With respect to a state body holding a public meeting pursuant to these provisions, the bill would suspend certain requirements of existing law, including the requirements that each teleconference location be accessible to the public and that members of the public be able to address the state body at each teleconference location. Under the bill, a state body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically would satisfy any requirement that the state body allow members of the public to attend the meeting and offer public comment. The bill would require that each state body that holds a meeting through teleconferencing provide notice of the meeting, and post the agenda, as provided. The bill would urge state bodies utilizing these teleconferencing procedures in the bill to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to existing law, as provided.

(3) Existing law establishes the various campuses of the California State University under the administration of the Trustees of the California State University, and authorizes the establishment of student body organizations in connection with the operations of California State University campuses.

The Gloria Romero Open Meetings Act of 2000 generally requires a legislative body, as defined, of a student body organization to conduct its business in a meeting that is open and public. The act authorizes the legislative body to use teleconferencing, as defined, for the benefit of the public and the legislative body in connection with any meeting or proceeding authorized by law.

This bill, until January 31, 2022, would authorize, subject to specified notice and accessibility requirements, a legislative body, as defined for purposes of the act, to hold public meetings through teleconferencing and

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to make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the legislative body. With respect to a legislative body holding a public meeting pursuant to these provisions, the bill would suspend certain requirements of existing law, including the requirements that each teleconference location be accessible to the public and that members of the public be able to address the legislative body at each teleconference location. Under the bill, a legislative body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically would satisfy any requirement that the legislative body allow members of the public to attend the meeting and offer public comment. The bill would require that each legislative body that holds a meeting through teleconferencing provide notice of the meeting, and post the agenda, as provided. The bill would urge legislative bodies utilizing these teleconferencing procedures in the bill to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to existing law, as provided.

(4) This bill would declare the Legislature's intent, consistent with the Governor's Executive Order No. N-29-20, to improve and enhance public access to state and local agency meetings during the COVID-19 pandemic and future emergencies by allowing broader access through teleconferencing options.

(5) This bill would incorporate additional changes to Section 54953 of the Government Code proposed by AB 339 to be operative only if this bill and AB 339 are enacted and this bill is enacted last.

(6) The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

(7) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(8) This bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 89305.6 is added to the Education Code, to read:  
89305.6. (a) Notwithstanding any other provision of this article, and subject to the notice and accessibility requirements in subdivisions (d) and (e), a legislative body may hold public meetings through teleconferencing

and make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the legislative body.

(b) (1) For a legislative body holding a public meeting through teleconferencing pursuant to this section, all requirements in this article requiring the physical presence of members, the clerk or other personnel of the legislative body, or the public, as a condition of participation in or quorum for a public meeting, are hereby suspended.

(2) For a legislative body holding a public meeting through teleconferencing pursuant to this section, all of the following requirements in this article are suspended:

(A) Each teleconference location from which a member will be participating in a public meeting or proceeding be identified in the notice and agenda of the public meeting or proceeding.

(B) Each teleconference location be accessible to the public.

(C) Members of the public may address the legislative body at each teleconference conference location.

(D) Post agendas at all teleconference locations.

(E) At least one member of the legislative body be physically present at the location specified in the notice of the meeting.

(c) A legislative body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements in subdivisions (d) and (e), shall have satisfied any requirement that the legislative body allow members of the public to attend the meeting and offer public comment. A legislative body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

(d) If a legislative body holds a meeting through teleconferencing pursuant to this section and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the legislative body shall also do both of the following:

(1) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

(2) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to paragraph (2) of subdivision (e).

(e) Except to the extent this section provides otherwise, each legislative body that holds a meeting through teleconferencing pursuant to this section shall do both of the following:

(1) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by this article, and using the means otherwise prescribed by this article, as applicable.

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(2) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in the means of public observation and comment, or any instance prior to the effective date of this section in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of the means of public observation and comment, a legislative body may satisfy this requirement by advertising the means of public observation and comment using the most rapid means of communication available at the time. Advertising the means of public observation and comment using the most rapid means of communication available at the time shall include, but need not be limited to, posting such means on the legislative body's internet website.

(f) All legislative bodies utilizing the teleconferencing procedures in this section are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the otherwise applicable provisions of this article, in order to maximize transparency and provide the public access to legislative body meetings.

(g) This section shall remain in effect only until January 31, 2022, and as of that date is repealed.

SEC. 2. Section 11133 is added to the Government Code, to read:

11133. (a) Notwithstanding any other provision of this article, and subject to the notice and accessibility requirements in subdivisions (d) and (e), a state body may hold public meetings through teleconferencing and make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the state body.

(b) (1) For a state body holding a public meeting through teleconferencing pursuant to this section, all requirements in this article requiring the physical presence of members, the clerk or other personnel of the state body, or the public, as a condition of participation in or quorum for a public meeting, are hereby suspended.

(2) For a state body holding a public meeting through teleconferencing pursuant to this section, all of the following requirements in this article are suspended:

(A) Each teleconference location from which a member will be participating in a public meeting or proceeding be identified in the notice and agenda of the public meeting or proceeding.

(B) Each teleconference location be accessible to the public.

(C) Members of the public may address the state body at each teleconference conference location.

(D) Post agendas at all teleconference locations.

(E) At least one member of the state body be physically present at the location specified in the notice of the meeting.

(c) A state body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically

or otherwise electronically, consistent with the notice and accessibility requirements in subdivisions (d) and (e), shall have satisfied any requirement that the state body allow members of the public to attend the meeting and offer public comment. A state body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

(d) If a state body holds a meeting through teleconferencing pursuant to this section and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the state body shall also do both of the following:

(1) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

(2) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to paragraph (2) of subdivision (e).

(e) Except to the extent this section provides otherwise, each state body that holds a meeting through teleconferencing pursuant to this section shall do both of the following:

(1) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by this article, and using the means otherwise prescribed by this article, as applicable.

(2) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in the means of public observation and comment, or any instance prior to the effective date of this section in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of the means of public observation and comment, a state body may satisfy this requirement by advertising the means of public observation and comment using the most rapid means of communication available at the time. Advertising the means of public observation and comment using the most rapid means of communication available at the time shall include, but need not be limited to, posting such means on the state body's internet website.

(f) All state bodies utilizing the teleconferencing procedures in this section are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the otherwise applicable provisions of this article, in order to maximize transparency and provide the public access to state body meetings.

(g) This section shall remain in effect only until January 31, 2022, and as of that date is repealed.

SEC. 3. Section 54953 of the Government Code is amended to read:

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54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public’s right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.



(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3.

In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, “state of emergency” means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 3.1. Section 54953 of the Government Code is amended to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency in person, except as otherwise provided in this chapter. Local agencies shall conduct meetings subject to this chapter consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body

shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public’s right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter

2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3. In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for

the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, “state of emergency” means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 4. Section 54953 is added to the Government Code, to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting

of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public’s right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting,

members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) This section shall become operative January 1, 2024.

SEC. 4.1. Section 54953 is added to the Government Code, to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, in person except as otherwise provided in this chapter. Local agencies shall conduct meetings subject to this chapter consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the



legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public’s right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint

powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) This section shall become operative January 1, 2024.

SEC. 5. Sections 3.1 and 4.1 of this bill incorporate amendments to Section 54953 of the Government Code proposed by both this bill and Assembly Bill 339. Those sections of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, but this bill becomes operative first, (2) each bill amends Section 54953 of the Government Code, and (3) this bill is enacted after Assembly Bill 339, in which case Section 54953 of the Government Code, as amended by Sections 3 and 4 of this bill, shall remain operative only until the operative date of Assembly Bill 339, at which time Sections 3.1 and 4.1 of this bill shall become operative.

SEC. 6. It is the intent of the Legislature in enacting this act to improve and enhance public access to state and local agency meetings during the COVID-19 pandemic and future applicable emergencies, by allowing broader access through teleconferencing options consistent with the Governor's Executive Order No. N-29-20 dated March 17, 2020, permitting expanded use of teleconferencing during the COVID-19 pandemic.

SEC. 7. The Legislature finds and declares that Sections 3 and 4 of this act, which amend, repeal, and add Section 54953 of the Government Code, further, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

This act is necessary to ensure minimum standards for public participation and notice requirements allowing for greater public participation in teleconference meetings during applicable emergencies.

SEC. 8. (a) The Legislature finds and declares that during the COVID-19 public health emergency, certain requirements of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) were suspended by Executive Order N-29-20. Audio and video teleconference were widely used to conduct public meetings in lieu of physical location meetings, and public meetings conducted by teleconference during the COVID-19 public health emergency have been productive, have increased public participation by all members of the public regardless of their location in the state and ability to travel to physical meeting locations, have protected the health and safety of civil servants and the public, and have reduced travel costs incurred by members of state bodies and reduced work hours spent traveling to and from meetings.

(b) The Legislature finds and declares that Section 1 of this act, which adds and repeals Section 89305.6 of the Education Code, Section 2 of this act, which adds and repeals Section 11133 of the Government Code, and Sections 3 and 4 of this act, which amend, repeal, and add Section 54953 of the Government Code, all increase and potentially limit the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

(1) By removing the requirement that public meetings be conducted at a primary physical location with a quorum of members present, this act protects the health and safety of civil servants and the public and does not preference the experience of members of the public who might be able to attend a meeting in a physical location over members of the public who cannot travel or attend that meeting in a physical location.

(2) By removing the requirement for agendas to be placed at the location of each public official participating in a public meeting remotely, including from the member's private home or hotel room, this act protects the personal, private information of public officials and their families while preserving the public's right to access information concerning the conduct of the people's business.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that state and local agencies can continue holding public meetings while providing essential services like water, power, and fire protection to their constituents during public health, wildfire, or other states of emergencies, it is necessary that this act take effect immediately.

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## DECLARATION OF A LOCAL HEALTH EMERGENCY

WHEREAS, Health and Safety Code section 101080 authorizes a local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, non-communicable biologic agent, toxin, or radioactive agent;

WHEREAS, the Centers for Disease Control and Prevention announced on February 25, 2020 that community spread of COVID-19 is likely to occur in the United States;

WHEREAS, based on the Centers for Disease Control and Prevention statements, there is an ongoing risk and likelihood of COVID-19 positive patients being identified in Orange County;

WHEREAS, based on the foregoing, there is an imminent and proximate threat of the introduction of COVID-19 in the County of Orange and a threat to the public health of the County residents;

THEREFORE, the County Health Officer hereby declares a health emergency.



Nichole Quick, MD, MPH  
Health Officer

2/26/2020

Date

COUNTY OF ORANGE  
STATE OF CALIFORNIA  
PROCLAMATION OF A LOCAL EMERGENCY

REQUEST FOR GOVERNOR TO DECLARE A STATE OF EMERGENCY

WHEREAS, in accordance with Government Code Section 8630, a local emergency may be proclaimed by the Board of Supervisors of the County of Orange or by an official so designated by ordinance adopted by the Board of Supervisors; and

WHEREAS, Section 3-1-6(a) of the Codified Ordinances of the County of Orange provides that the Director of Emergency Services shall request the Board of Supervisors to proclaim a local emergency when the Board of Supervisors is in session and the Chair of the Emergency Management Council to so proclaim when the Board of Supervisors is not in session; and

WHEREAS, the Board of Supervisors is not currently in session, and the Director of Emergency Services has requested that the Chair of the Emergency Management Council proclaim a local emergency; and

WHEREAS, a novel coronavirus, COVID-19, which causes infectious disease resulting in symptoms of fever, coughing and shortness of breath with outcomes ranging from mild to severe illness and in some cases death, has arisen in China and spread to numerous other countries including the United States; and

WHEREAS, the Centers for Disease Control and Prevention has determined the virus to be a very serious public health threat, yet the method and efficacy of transmission of the virus is not yet fully understood and no vaccine currently exists; and

WHEREAS, Orange County has a population of over 3 million residents, is a major tourist destination, has a high volume airport within its jurisdiction and is a significant

destination for business travel all resulting in high volumes of foreign and domestic travelers traveling into and out of the County, which has the potential to result in significant spreading of the disease; and

WHEREAS, the Health Officer of the County of Orange has determined that the County is preparing for an imminent and proximate threat to public health from the virus; and

WHEREAS, communities within the geographic boundaries of Orange County have and will continue to prepare and, as necessary, take significant response actions to any developing contagion and to any other risks that may arise from introduction and possible spread of the virus;

WHEREAS, the above described events are creating a condition of extreme peril to the safety of persons and property within the territorial limits of the County of Orange which conditions are or are likely to be beyond the control of the services, personnel, equipment and facilities of the County of Orange, and require the combined forces of other political subdivisions to combat;

IT IS HEREBY PROCLAIMED that a local emergency exists within the geographic area of Orange County;

IT IS FURTHER PROCLAIMED AND ORDERED that as of this date all County departments and agencies take those actions, measures and steps deemed necessary to assure the safety and welfare of Orange County residents and property, including requesting mutual aid to the extent such aid is necessary and utilizing EOC Cal Cards and any other available funding stream to acquire resources determined by the DES or an authorized emergency purchaser as necessary to respond to this declared emergency.

ACCORDINGLY, THE CHAIR OF THE BOARD OF SUPERVISORS ACTING AS THE CHAIR OF THE EMERGENCY MANAGEMENT COUNCIL HEREBY REQUESTS that the Governor declare a State of Emergency and make all relevant funds available to the County of Orange and all eligible community members and businesses, including but not limited to, California Disaster Assistance Act funds and State Private Nonprofit Organizations Assistance Program funds, and that the Governor request that the President of the United States make a Presidential Declaration of Emergency in and for the County of Orange and make all relevant funds available to the County of Orange and all eligible community members and businesses, including, but not limited to, aid provided by the Small Business Administration.

Date: 2/26/20

Signed: 

Michelle Steel,  
Chairwoman of the Board of Supervisors Acting as  
the Chair of the Emergency Management Council  
County of Orange

Attachment A

RESOLUTION OF THE BOARD OF SUPERVISORS OF  
ORANGE COUNTY, CALIFORNIA  
March 2, 2020

WHEREAS, Health and Safety Code section 101080 authorizes a local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, non-communicable biologic agent, toxin, or radioactive agent;

WHEREAS, on February 26, 2020, the County's Health Officer declared a local health emergency based on an imminent and proximate threat to public health from the introduction of a novel coronavirus (named "COVID-19") in Orange County.

WHEREAS, under Health and Safety Code Section 101080, the local health emergency shall not remain in effect for more than seven days unless ratified by the Board of Supervisors;

WHEREAS, the Board of Supervisors hereby finds that there continues to exist an imminent and proximate threat to public health from the introduction of COVID-19 in Orange County for reasons set forth in the declaration of local health emergency by County's Health Officer, dated February 26, 2020;

NOW, THEREFORE, BE IT RESOLVED by the Orange County Board of Supervisors that:

1. The local health emergency declared by the County's Health Officer on February 26, 2020 is hereby ratified. Under Health and Safety Code Section 101080, the local health emergency may remain in effect for no more than 30 days from the date of this Resolution.
2. The County's Health Officer is directed to bring for review by the Board of Supervisors the need for continuing the local health emergency no later than the date




coinciding with the expiration of this Resolution

3. The Board of Supervisors delegates authority to the County's Health Officer to terminate the local health emergency, pursuant to Health and Safety Code Section 101080, "at the earliest possible date that conditions warrant the terminations."
4. All County departments and agencies take those actions, measures, and steps deemed necessary to assure the health, safety and welfare of Orange County citizens and property, including requesting mutual aid to the extent such aid is necessary.

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APPROVED AS TO FORM  
OFFICE OF THE COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By   
Deputy  
Date 2/27/20

Attachment C

RESOLUTION OF THE BOARD OF SUPERVISORS OF  
ORANGE COUNTY, CALIFORNIA  
March 2, 2020

WHEREAS, Government Code section 8630 and section 3-1-6(a) of the Codified Ordinances of the County of Orange empower the Director of Emergency Services to request the Chair of the Emergency Management Council to proclaim the existence or threatened existence of a local emergency, subject to ratification by the Board of Supervisors within seven days; and

WHEREAS, a novel coronavirus, COVID-19, which causes infectious disease resulting in symptoms of fever, coughing and shortness of breath with outcomes ranging from mild to severe illness and in some cases death, has arisen in China and spread to numerous other countries including the United States; and

WHEREAS, the Centers for Disease Control and Prevention has determined the virus to be a very serious public health threat, yet the method and efficacy of transmission of the virus is not yet fully understood and no vaccine currently exists; and

WHEREAS, Orange County has a population of over 3 million residents, is a major tourist destination, has a high volume airport within its jurisdiction and is a significant destination for business travel all resulting in high volumes of foreign and domestic travelers traveling into and out of the County, which has the potential to result in significant spreading of the disease; and

WHEREAS, the Health Officer of the County of Orange has determined that the County is preparing for an imminent and proximate threat to public health from the virus; and

WHEREAS, communities within the geographic boundaries of Orange County have and will continue to prepare and, as necessary, take significant response actions to any developing contagion and to any other risks that may arise from introduction and possible spread of the virus;

Attachment C

WHEREAS, the above described events are creating conditions of extreme peril and such conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of the County, requiring the combined forces of other political subdivisions to combat;  
and

WHEREAS, at the request of the Director of Emergency Services, the Chair of the Emergency Management Council, on February 26, 2020, did proclaim the existence of local emergency within the County of Orange; and

WHEREAS, the Board of Supervisors does hereby find that the aforesaid conditions of extreme peril did warrant and necessitate the proclamation of the existence of a local emergency;  
and

WHEREAS, the Board of Supervisors also finds a local emergency does exist and shall be deemed to continue to exist until its termination is proclaimed by the Board of Supervisors;

NOW, THEREFORE, BE IT RESOLVED that the Orange County Board of Supervisors does hereby ratify the Chair of the Emergency Management Council's February 26, 2020, Proclamation of a Local Emergency.

BE IT FURTHER RESOLVED that all powers, functions, and duties of the emergency organization of the County of Orange shall be vested in such persons as prescribed by federal and state law, by County ordinances and resolutions, and by the Orange County Emergency Plan now in effect.

BE IT FURTHER RESOLVED that all County departments and agencies take those actions, measures, and steps deemed necessary to assure the safety and welfare of Orange County citizens and property, including requesting mutual aid to the extent such aid is necessary.

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Resolution No. \_\_\_\_\_ Item No. \_\_\_\_\_  
Proclamation of a Local Emergency

APPROVED AS TO FORM  
OFFICE OF THE COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By [Signature]  
Deputy  
Date 2/27/20

EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

PROCLAMATION OF A STATE OF EMERGENCY

**WHEREAS** in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, impacting more than 75 countries, including the United States; and

**WHEREAS** the State of California has been working in close collaboration with the national Centers for Disease Control and Prevention (CDC), with the United States Health and Human Services Agency, and with local health departments since December 2019 to monitor and plan for the potential spread of COVID-19 to the United States; and

**WHEREAS** on January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID-19 across the country; and

**WHEREAS** on January 24, 2020, the California Department of Public Health activated its Medical and Health Coordination Center and on March 2, 2020, the Office of Emergency Services activated the State Operations Center to support and guide state and local actions to preserve public health; and

**WHEREAS** the California Department of Public Health has been in regular communication with hospitals, clinics and other health providers and has provided guidance to health facilities and providers regarding COVID-19; and

**WHEREAS** as of March 4, 2020, across the globe, there are more than 94,000 confirmed cases of COVID-19, tragically resulting in more than 3,000 deaths worldwide; and

**WHEREAS** as of March 4, 2020, there are 129 confirmed cases of COVID-19 in the United States, including 53 in California, and more than 9,400 Californians across 49 counties are in home monitoring based on possible travel-based exposure to the virus, and officials expect the number of cases in California, the United States, and worldwide to increase; and

**WHEREAS** for more than a decade California has had a robust pandemic influenza plan, supported local governments in the development of local plans, and required that state and local plans be regularly updated and exercised; and

**WHEREAS** California has a strong federal, state and local public health and health care delivery system that has effectively responded to prior events including the H1N1 influenza virus in 2009, and most recently Ebola; and



**WHEREAS** experts anticipate that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or already have underlying chronic health conditions; and

**WHEREAS** it is imperative to prepare for and respond to suspected or confirmed COVID-19 cases in California, to implement measures to mitigate the spread of COVID-19, and to prepare to respond to an increasing number of individuals requiring medical care and hospitalization; and

**WHEREAS** if COVID-19 spreads in California at a rate comparable to the rate of spread in other countries, the number of persons requiring medical care may exceed locally available resources, and controlling outbreaks minimizes the risk to the public, maintains the health and safety of the people of California, and limits the spread of infection in our communities and within the healthcare delivery system; and

**WHEREAS** personal protective equipment (PPE) is not necessary for use by the general population but appropriate PPE is one of the most effective ways to preserve and protect California's healthcare workforce at this critical time and to prevent the spread of COVID-19 broadly; and

**WHEREAS** state and local health departments must use all available preventative measures to combat the spread of COVID-19, which will require access to services, personnel, equipment, facilities, and other resources, potentially including resources beyond those currently available, to prepare for and respond to any potential cases and the spread of the virus; and

**WHEREAS** I find that conditions of Government Code section 8558(b), relating to the declaration of a State of Emergency, have been met; and

**WHEREAS** I find that the conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and

**WHEREAS** under the provisions of Government Code section 8625(c), I find that local authority is inadequate to cope with the threat posed by COVID-19; and

**WHEREAS** under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.





**IT IS HEREBY ORDERED THAT:**

1. In preparing for and responding to COVID-19, all agencies of the state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Office of Emergency Services and the State Emergency Plan, as well as the California Department of Public Health and the Emergency Medical Services Authority. Also, all residents are to heed the advice of emergency officials with regard to this emergency in order to protect their safety.
2. As necessary to assist local governments and for the protection of public health, state agencies shall enter into contracts to arrange for the procurement of materials, goods, and services needed to assist in preparing for, containing, responding to, mitigating the effects of, and recovering from the spread of COVID-19. Applicable provisions of the Government Code and the Public Contract Code, including but not limited to travel, advertising, and competitive bidding requirements, are suspended to the extent necessary to address the effects of COVID-19.
3. Any out-of-state personnel, including, but not limited to, medical personnel, entering California to assist in preparing for, responding to, mitigating the effects of, and recovering from COVID-19 shall be permitted to provide services in the same manner as prescribed in Government Code section 179.5, with respect to licensing and certification. Permission for any such individual rendering service is subject to the approval of the Director of the Emergency Medical Services Authority for medical personnel and the Director of the Office of Emergency Services for non-medical personnel and shall be in effect for a period of time not to exceed the duration of this emergency.
4. The time limitation set forth in Penal Code section 396, subdivision (b), prohibiting price gouging in time of emergency is hereby waived as it relates to emergency supplies and medical supplies. These price gouging protections shall be in effect through September 4, 2020.
5. Any state-owned properties that the Office of Emergency Services determines are suitable for use to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services for this purpose, notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.
6. Any fairgrounds that the Office of Emergency Services determines are suitable to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services pursuant to the Emergency Services Act, Government Code section 8589. The Office of Emergency Services shall notify the fairgrounds of the intended use and can immediately use the fairgrounds without the fairground board of directors' approval, and



notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.

7. The 30-day time period in Health and Safety Code section 101080, within which a local governing authority must renew a local health emergency, is hereby waived for the duration of this statewide emergency. Any such local health emergency will remain in effect until each local governing authority terminates its respective local health emergency.
8. The 60-day time period in Government Code section 8630, within which local government authorities must renew a local emergency, is hereby waived for the duration of this statewide emergency. Any local emergency proclaimed will remain in effect until each local governing authority terminates its respective local emergency.
9. The Office of Emergency Services shall provide assistance to local governments that have demonstrated extraordinary or disproportionate impacts from COVID-19, if appropriate and necessary, under the authority of the California Disaster Assistance Act, Government Code section 8680 et seq., and California Code of Regulations, Title 19, section 2900 et seq.
10. To ensure hospitals and other health facilities are able to adequately treat patients legally isolated as a result of COVID-19, the Director of the California Department of Public Health may waive any of the licensing requirements of Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations with respect to any hospital or health facility identified in Health and Safety Code section 1250. Any waiver shall include alternative measures that, under the circumstances, will allow the facilities to treat legally isolated patients while protecting public health and safety. Any facilities being granted a waiver shall be established and operated in accordance with the facility's required disaster and mass casualty plan. Any waivers granted pursuant to this paragraph shall be posted on the Department's website.
11. To support consistent practices across California, state departments, in coordination with the Office of Emergency Services, shall provide updated and specific guidance relating to preventing and mitigating COVID-19 to schools, employers, employees, first responders and community care facilities by no later than March 10, 2020.
12. To promptly respond for the protection of public health, state entities are, notwithstanding any other state or local law, authorized to share relevant medical information, limited to the patient's underlying health conditions, age, current condition, date of exposure, and possible contact tracing, as necessary to address the effect of the COVID-19 outbreak with state, local, federal, and nongovernmental partners, with such information to be used for the limited purposes of monitoring, investigation and control, and treatment and coordination of care. The



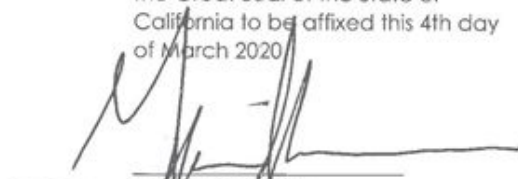
notification requirement of Civil Code section 1798.24, subdivision (i), is suspended.

13. Notwithstanding Health and Safety Code sections 1797.52 and 1797.218, during the course of this emergency, any EMT-P licensees shall have the authority to transport patients to medical facilities other than acute care hospitals when approved by the California EMS Authority. In order to carry out this order, to the extent that the provisions of Health and Safety Code sections 1797.52 and 1797.218 may prohibit EMT-P licensees from transporting patients to facilities other than acute care hospitals, those statutes are hereby suspended until the termination of this State of Emergency.

14. The Department of Social Services may, to the extent the Department deems necessary to respond to the threat of COVID-19, waive any provisions of the Health and Safety Code or Welfare and Institutions Code, and accompanying regulations, interim licensing standards, or other written policies or procedures with respect to the use, licensing, or approval of facilities or homes within the Department's jurisdiction set forth in the California Community Care Facilities Act (Health and Safety Code section 1500 et seq.), the California Child Day Care Facilities Act (Health and Safety Code section 1596.70 et seq.), and the California Residential Care Facilities for the Elderly Act (Health and Safety Code section 1569 et seq.). Any waivers granted pursuant to this paragraph shall be posted on the Department's website.

**I FURTHER DIRECT** that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 4th day of March 2020.

  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State





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Subchapter 7. General Industry Safety Orders  
Introduction

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## §3205. COVID-19 Prevention.

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NOTE: *See Executive Order N-84-20 (2019 CA EO 84-20), issued in response to the COVID-19 pandemic, which suspends certain provisions relating to the exclusion of COVID-19 cases from the workplace.*

(a) Scope.

(1) This section applies to all employees and places of employment, with the following exceptions:

(A) Work locations with one employee who does not have contact with other persons.

(B) Employees working from home.

(C) Employees with occupational exposure as defined by section 5199, when covered by that section.

(D) Employees teleworking from a location of the employee's choice, which is not under the control of the employer.

(2) Nothing in this section is intended to limit more protective or stringent state or local health department mandates or guidance.

(b) Definitions. The following definitions apply to this section and to sections 3205.1 through 3205.4.

(1) “Close contact” means being within six feet of a COVID-19 case for a cumulative total of 15 minutes or greater in any 24-hour period within or overlapping with the “high-risk exposure period” defined by this section. This definition applies regardless of the use of face coverings.

EXCEPTION: Employees have not had a close contact if they wore a respirator required by the employer and used in compliance with section 5144, whenever they were within six feet of the COVID-19 case during the high-risk exposure period.

(2) “COVID-19” means coronavirus disease, an infectious disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(3) “COVID-19 case” means a person who:

(A) Has a positive “COVID-19 test” as defined in this section; or

(B) Has a positive COVID-19 diagnosis from a licensed health care provider; or

(C) Is subject to a COVID-19-related order to isolate issued by a local or state health official; or

(D) Has died due to COVID-19, in the determination of a local health department or per inclusion in the COVID-19 statistics of a county.

(4) “COVID-19 hazard” means potentially infectious material that may contain SARS-CoV-2, the virus that causes COVID-19. Potentially infectious materials include airborne droplets, small particle aerosols, and airborne droplet nuclei, which most commonly result from a person or persons exhaling, talking or vocalizing, coughing, or sneezing, or from procedures performed on persons which may aerosolize saliva or respiratory tract fluids. This also includes objects or surfaces that may be contaminated with SARS-CoV-2.

(5) “COVID-19 symptoms” means fever of 100.4 degrees Fahrenheit or higher, chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or

diarrhea, unless a licensed health care professional determines the person's symptoms were caused by a known condition other than COVID-19.

(6) "COVID-19 test" means a viral test for SARS-CoV-2 that is:

(A) Approved by the United States Food and Drug Administration (FDA) or has an Emergency Use Authorization from the FDA to diagnose current infection with the SARS-CoV-2 virus; and

(B) Administered in accordance with the FDA approval or the FDA Emergency Use Authorization as applicable.

(7) "Exposed group" means all employees at a work location, working area, or a common area at work, where an employee COVID-19 case was present at any time during the high-risk exposure period. A common area at work includes bathrooms, walkways, hallways, aisles, break or eating areas, and waiting areas. The following exceptions apply:

(A) For the purpose of determining the exposed group, a place where persons momentarily pass through while everyone is wearing face coverings, without congregating, is not a work location, working area, or a common area at work.

(B) If the COVID-19 case was part of a distinct group of employees who are not present at the workplace at the same time as other employees, for instance a work crew or shift that does not overlap with another work crew or shift, only employees within that distinct group are part of the exposed group.

(C) If the COVID-19 case visited a work location, working area, or a common area at work for less than 15 minutes during the high-risk exposure period, and the COVID-19 case was wearing a face covering during the entire visit, other people at the work location, working area, or common area are not part of the exposed group.

NOTE: An exposed group may include the employees of more than one employer. See Labor Code sections 6303 and 6304.1.

(8) "Face covering" means a surgical mask, a medical procedure mask, a respirator worn voluntarily, or a tightly woven fabric or non-woven material of at least two layers. A face covering has no visible holes or openings and must cover the nose and mouth. A face covering does not include a scarf, ski mask, balaclava, bandana, turtleneck, collar, or single layer of fabric.

(9) “Fully vaccinated” means the employer has documented that the person received, at least 14 days prior, either the second dose in a two-dose COVID-19 vaccine series or a single-dose COVID-19 vaccine. Vaccines must be FDA approved; have an emergency use authorization from the FDA; or, for persons fully vaccinated outside the United States, be listed for emergency use by the World Health Organization (WHO).

(10) “High-risk exposure period” means the following time period:

(A) For COVID-19 cases who develop COVID-19 symptoms, from two days before they first develop symptoms until all of the following are true: it has been 10 days since symptoms first appeared; 24 hours have passed with no fever, without the use of fever-reducing medications; and symptoms have improved.

(B) For COVID-19 cases who never develop COVID-19 symptoms, from two days before until 10 days after the specimen for their first positive test for COVID-19 was collected.

(11) “Respirator” means a respiratory protection device approved by the National Institute for Occupational Safety and Health (NIOSH) to protect the wearer from particulate matter, such as an N95 filtering facepiece respirator.

(12) “Worksite,” for the limited purposes of COVID-19 prevention regulations only, means the building, store, facility, agricultural field, or other location where a COVID-19 case was present during the high-risk exposure period. It does not apply to buildings, floors, or other locations of the employer that a COVID-19 case did not enter.

NOTE: The term worksite is used for the purpose of notice requirements in subsections (c)(3) (B)3. and 4. only.

(c) Written COVID-19 Prevention Program. Employers shall establish, implement, and maintain an effective, written COVID-19 Prevention Program, which may be integrated into the employer's Injury and Illness Prevention Program required by section 3203, or be maintained in a separate document. The written elements of a COVID-19 Prevention Program shall include:

(1) System for communicating. The employer shall do all of the following in a form readily understandable by employees:

(A) Ask employees to report to the employer, without fear of reprisal, COVID-19 symptoms, possible close contacts, and possible COVID-19 hazards at the workplace.

(B) Describe how employees with medical or other conditions that put them at increased

risk of severe COVID-19 illness can request accommodations.

(C) Provide information about access to COVID-19 testing as described in subsection (c)(5) (I) when testing is required under this section, section 3205.1, or section 3205.2.

(D) In accordance with subsection (c)(3)(B), communicate information about COVID-19 hazards and the employer's COVID-19 policies and procedures to employees and to other employers, persons, and entities within or in contact with the employer's workplace.

NOTE: See subsection (c)(3)(C) for confidentiality requirements for COVID-19 cases.

(2) Identification and evaluation of COVID-19 hazards.

(A) The employer shall allow for employee and authorized employee representative participation in the identification and evaluation of COVID-19 hazards.

(B) The employer shall develop and implement a process for screening employees for and responding to employees with COVID-19 symptoms. The employer may ask employees to evaluate their own symptoms before reporting to work. If the employer conducts screening indoors at the workplace, the employer shall ensure that face coverings are used during screening by both screeners and employees who are not fully vaccinated and, if temperatures are measured, that non-contact thermometers are used.

(C) The employer shall develop COVID-19 policies and procedures to respond effectively and immediately to individuals at the workplace who are a COVID-19 case to prevent or reduce the risk of transmission of COVID-19 in the workplace.

(D) The employer shall conduct a workplace-specific identification of all interactions, areas, activities, processes, equipment, and materials that could potentially expose employees to COVID-19 hazards. Employers shall treat all persons, regardless of symptoms or negative COVID-19 test results, as potentially infectious.

1. This shall include identification of places and times when people may congregate or come in contact with one another, regardless of whether employees are performing an assigned work task or not, for instance during meetings or trainings and including in and around entrances, bathrooms, hallways, aisles, walkways, elevators, break or eating areas, cool-down areas, and waiting areas.

2. This shall include an evaluation of employees' potential workplace exposure to all persons at the workplace or who may enter the workplace, including

coworkers, employees of other entities, members of the public, customers or clients, and independent contractors. Employers shall consider how employees and other persons enter, leave, and travel through the workplace, in addition to addressing stationary work.

(E) For indoor locations, the employer shall evaluate how to maximize ventilation with outdoor air; the highest level of filtration efficiency compatible with the existing ventilation system; and whether the use of portable or mounted High Efficiency Particulate Air (HEPA) filtration units, or other air cleaning systems, would reduce the risk of COVID-19 transmission.

(F) The employer shall review applicable orders and guidance from the State of California and the local health department related to COVID-19 hazards and prevention. These orders and guidance are both information of general application, including Interim guidance for Ventilation, Filtration, and Air Quality in Indoor Environments by the California Department of Public Health (CDPH), and information specific to the employer's industry, location, and operations.

(G) The employer shall evaluate existing COVID-19 prevention controls at the workplace and the need for different or additional controls. This includes evaluation of controls in subsections (c)(4), (c)(6), and (c)(7).

(H) The employer shall conduct periodic inspections as needed to identify unhealthy conditions, work practices, and work procedures related to COVID-19 and to ensure compliance with employers' COVID-19 policies and procedures.

(3) Investigating and responding to COVID-19 cases in the workplace.

(A) Employers shall have an effective procedure to investigate COVID-19 cases in the workplace. This includes procedures for seeking information from employees regarding COVID-19 cases and close contacts, COVID-19 test results, and onset of COVID-19 symptoms, and identifying and recording COVID-19 cases.

(B) The employer shall take the following actions when there has been a COVID-19 case at the place of employment:

1. Determine the day and time the COVID-19 case was last present and, to the extent possible, the date of the positive COVID-19 test(s) and/or diagnosis, and the date the COVID-19 case first had one or more COVID-19 symptoms, if any were experienced.

2. Determine who may have had a close contact. This requires an evaluation of the activities of the COVID-19 case and all locations at the workplace which may have been visited by the COVID-19 case during the high-risk exposure period.

NOTE: See subsection (c)(9) for exclusion requirements for employees after a close contact.

3. Within one business day of the time the employer knew or should have known of a COVID-19 case, the employer shall give written notice, in a form readily understandable by employees, that people at the worksite may have been exposed to COVID-19. The notice shall be written in a way that does not reveal any personal identifying information of the COVID-19 case. Written notice may include, but is not limited to, personal service, email, or text message if it can reasonably be anticipated to be received by the employee within one business day of sending. The notice shall include the disinfection plan required by Labor Code section 6409.6(a)(4). The notice must be sent to the following:

a. All employees at the worksite during the high-risk exposure period. If the employer should reasonably know that an employee has not received the notice, or has limited literacy in the language used in the notice, the employer shall provide verbal notice, as soon as practicable, in a language understandable by the employee.

b. Independent contractors and other employers at the worksite during the high-risk exposure period.

4. Within one business day of the time the employer knew or should have known of the COVID-19 case, the employer shall provide the notice required by Labor Code section 6409.6(a)(2) and (c) to the authorized representative of any employee at the worksite during the high-risk exposure period.

5. Make COVID-19 testing available at no cost, during paid time, to all employees of the employer who had a close contact in the workplace and provide them with the information on benefits described in subsections (c)(5)(B) and (c)(9)(C), with the following exceptions:

a. Employees who were fully vaccinated before the close contact and do not have COVID-19 symptoms.

b. COVID-19 cases who returned to work pursuant to subsection 3205(c)(10) (A) or (B) and have remained free of COVID-19 symptoms, for 90 days after

the initial onset of COVID-19 symptoms or, for COVID-19 cases who never developed symptoms, for 90 days after the first positive test.

6. Investigate whether workplace conditions could have contributed to the risk of COVID-19 exposure and what could be done to reduce exposure to COVID-19 hazards.

(C) Personal identifying information of COVID-19 cases or persons with COVID-19 symptoms, and any employee medical records required by this section or by sections 3205.1 through 3205.4, shall be kept confidential unless disclosure is required or permitted by law. Unredacted information on COVID-19 cases shall be provided to the local health department, CDPH, the Division, and NIOSH immediately upon request, and when required by law.

(4) Correction of COVID-19 hazards. Employers shall implement effective policies and/or procedures for correcting unsafe or unhealthy conditions, work practices, policies and procedures in a timely manner based on the severity of the hazard. This includes, but is not limited to, implementing controls and/or policies and procedures in response to the evaluations conducted under subsections (c)(2) and (c)(3) and implementing the controls required by subsections (c)(6) and (c)(7).

(5) Training and instruction. The employer shall provide effective training and instruction to employees that includes the following:

(A) The employer's COVID-19 policies and procedures to protect employees from COVID-19 hazards, and how to participate in the identification and evaluation of COVID-19 hazards under subsection (c)(2)(A).

(B) Information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws. This includes any benefits available under legally mandated sick and vaccination leave, if applicable, workers' compensation law, local governmental requirements, the employer's own leave policies, leave guaranteed by contract, and this section.

(C) The fact that COVID-19 is an infectious disease that can be spread through the air when an infectious person talks or vocalizes, sneezes, coughs, or exhales; that COVID-19 may be transmitted when a person touches a contaminated object and then touches their eyes, nose, or mouth, although that is less common; and that an infectious person may have no symptoms.



(D) The fact that particles containing the virus can travel more than six feet, especially indoors, so physical distancing, face coverings, increased ventilation indoors, and respiratory protection decrease the spread of COVID-19, but are most effective when used in combination.

(E) The employer's policies for providing respirators, and the right of employees who are not fully vaccinated to request a respirator for voluntary use as stated in this section, without fear of retaliation and at no cost to employees. Whenever respirators are provided for voluntary use under this section or sections 3205.1 through 3205.4:

1. How to properly wear the respirator provided;
2. How to perform a seal check according to the manufacturer's instructions each time a respirator is worn, and the fact that facial hair interferes with a seal.

(F) The importance of frequent hand washing with soap and water for at least 20 seconds and using hand sanitizer when employees do not have immediate access to a sink or hand washing facility, and that hand sanitizer does not work if the hands are soiled.

(G) Proper use of face coverings and the fact that face coverings are not respiratory protective equipment. COVID-19 is an airborne disease. N95s and more protective respirators protect the users from airborne disease while face coverings primarily protect people around the user.

(H) COVID-19 symptoms, and the importance of not coming to work and obtaining a COVID-19 test if the employee has COVID-19 symptoms.

(I) Information on the employer's COVID-19 policies; how to access COVID-19 testing and vaccination; and the fact that vaccination is effective at preventing COVID-19, protecting against both transmission and serious illness or death.

(J) The conditions under which face coverings must be worn at the workplace and that face coverings are additionally recommended outdoors for people who are not fully vaccinated if six feet of distance between people cannot be maintained. Employees can request face coverings from the employer at no cost to the employee and can wear them at work, regardless of vaccination status, without fear of retaliation.

(6) Face coverings.

(A) For all employees who are not fully vaccinated, employers shall provide face coverings

and ensure they are worn when indoors or in vehicles.

(B) Employers shall provide face coverings and ensure they are worn by employees when required by orders from the CDPH.

(C) Employers shall ensure that required face coverings are clean and undamaged, and that they are worn over the nose and mouth. Face shields are not a replacement for face coverings, although they may be worn together for additional protection.

(D) When employees are required to wear face coverings under this section or sections 3205.1 through 3205.4, the following exceptions apply:

1. When an employee is alone in a room or vehicle.
2. While eating or drinking at the workplace, provided employees are at least six feet apart and outside air supply to the area, if indoors, has been maximized to the extent feasible.
3. Employees wearing respirators required by the employer and used in compliance with section 5144.
4. Employees who cannot wear face coverings due to a medical or mental health condition or disability, or who are hearing-impaired or communicating with a hearing-impaired person.
5. Specific tasks which cannot feasibly be performed with a face covering. This exception is limited to the time period in which such tasks are actually being performed.

(E) Employees exempted from wearing face coverings due to a medical condition, mental health condition, or disability shall wear an effective non-restrictive alternative, such as a face shield with a drape on the bottom, if their condition or disability permits it.

(F) Any employee not wearing a face covering, pursuant to the exceptions in subsections (c) (6)(D)4. or 5., and not wearing a non-restrictive alternative when allowed by subsection (c) (6)(E), shall be at least six feet apart from all other persons unless the unmasked employee is either fully vaccinated or tested at least weekly for COVID-19 during paid time and at no cost to the employee. Employers may not use the provisions of subsection (c)(6)(F) as an alternative to face coverings when face coverings are otherwise required by this section.

(G) No employer shall prevent any employee from wearing a face covering when not required by this section, unless it would create a safety hazard, such as interfering with the safe operation of equipment.

(H) When face coverings are not required by this section or by sections 3205.1 through 3205.4, employers shall provide face coverings to employees upon request, regardless of vaccination status.

(I) Employers shall implement measures to communicate to non-employees the face coverings requirements on their premises.

(7) Other engineering controls, administrative controls, and personal protective equipment.

(A) For buildings with mechanical or natural ventilation, or both, employers shall maximize the quantity of outside air provided to the extent feasible, except when the United States Environmental Protection Agency (EPA) Air Quality Index is greater than 100 for any pollutant or if opening windows or maximizing outdoor air by other means would cause a hazard to employees, for instance from excessive heat or cold.

(B) Employers shall implement cleaning and disinfecting procedures, which require:

1. Identifying and regularly cleaning frequently touched surfaces and objects, such as doorknobs, elevator buttons, equipment, tools, handrails, handles, controls, phones, headsets, bathroom surfaces, and steering wheels. The employer shall inform employees and authorized employee representatives of cleaning and disinfection protocols, including the planned frequency and scope of cleaning and disinfection.
2. Cleaning of areas, material, and equipment used by a COVID-19 case during the high-risk exposure period, and disinfection if the area, material, or equipment is indoors and will be used by another employee within 24 hours of the COVID-19 case.

NOTE: Cleaning and disinfecting must be done in a manner that does not create a hazard to employees. See Group 2 and Group 16 of the General Industry Safety Orders for further information.

(C) To protect employees from COVID-19 hazards, the employer shall evaluate its handwashing facilities, determine the need for additional facilities, encourage and allow time for employee handwashing, and provide employees with an effective hand sanitizer.

Employers shall encourage employees to wash their hands for at least 20 seconds each time. Provision or use of hand sanitizers with methyl alcohol is prohibited.

(D) Personal protective equipment.

1. Employers shall evaluate the need for personal protective equipment to prevent exposure to COVID-19 hazards, such as gloves, goggles, and face shields, and provide such personal protective equipment as needed.
2. Upon request, employers shall provide respirators for voluntary use in compliance with subsection 5144(c)(2) to all employees who are not fully vaccinated and who are working indoors or in vehicles with more than one person. Whenever an employer makes respirators for voluntary use available, under this section or sections 3205.1 through 3205.4, the employer shall encourage their use and shall ensure that employees are provided with a respirator of the correct size.
3. Employers shall provide and ensure use of respirators in compliance with section 5144 when deemed necessary by the Division through the Issuance of Order to Take Special Action, in accordance with title 8, section 332.3.
4. Employers shall provide and ensure use of eye protection and respiratory protection in compliance with section 5144 when employees are exposed to procedures that may aerosolize potentially infectious material such as saliva or respiratory tract fluids.

NOTE: Examples of work covered by subsection (c)(7)(D)4. include, but are not limited to, certain dental procedures and outpatient medical specialties not covered by section 5199.

(E) Testing of symptomatic employees. Employers shall make COVID-19 testing available at no cost to employees with COVID-19 symptoms who are not fully vaccinated, during employees' paid time.

(8) Reporting, recordkeeping, and access.

(A) The employer shall report information about COVID-19 cases and outbreaks at the workplace to the local health department whenever required by law, and shall provide any related information requested by the local health department. The employer shall report all information to the local health department as required by Labor Code section 6409.6.

(B) The employer shall maintain records of the steps taken to implement the written

COVID-19 Prevention Program in accordance with section 3203(b).

(C) The written COVID-19 Prevention Program shall be made available at the workplace to employees, authorized employee representatives, and to representatives of the Division immediately upon request.

(D) The employer shall keep a record of and track all COVID-19 cases with the employee's name, contact information, occupation, location where the employee worked, the date of the last day at the workplace, and the date of a positive COVID-19 test.

(9) Exclusion of COVID-19 cases and employees who had a close contact. The purpose of this subsection is to limit transmission of COVID-19 in the workplace.

(A) Employers shall ensure that COVID-19 cases are excluded from the workplace until the return to work requirements of subsection (c)(10) are met.

(B) Employers shall exclude from the workplace employees who had a close contact until the return to work requirements of subsection (c)(10) are met, with the following exceptions:

1. Employees who were fully vaccinated before the close contact and who do not develop COVID-19 symptoms; and
2. COVID-19 cases who returned to work pursuant to subsection (c)(10)(A) or (B) and have remained free of COVID-19 symptoms, for 90 days after the initial onset of COVID-19 symptoms or, for COVID-19 cases who never developed COVID-19 symptoms, for 90 days after the first positive test.

(C) For employees excluded from work under subsection (c)(9), employers shall continue and maintain an employee's earnings, wages, seniority, and all other employee rights and benefits, including the employee's right to their former job status, as if the employee had not been removed from their job. Employers may use employer-provided employee sick leave for this purpose to the extent permitted by law. Wages due under this subsection are subject to existing wage payment obligations and must be paid at the employee's regular rate of pay no later than the regular pay day for the pay period(s) in which the employee is excluded. Unpaid wages owed under this subsection are subject to enforcement through procedures available in existing law. If an employer determines that one of the exceptions below applies, it shall inform the employee of the denial and the applicable exception.

EXCEPTION 1: Subsection (c)(9)(C) does not apply where the employee received disability

payments or was covered by workers' compensation and received temporary disability.

EXCEPTION 2: Subsection (c)(9)(C) does not apply where the employer demonstrates that the close contact is not work related.

(D) Subsection (c)(9) does not limit any other applicable law, employer policy, or collective bargaining agreement that provides for greater protections.

(E) At the time of exclusion, the employer shall provide the employee the information on benefits described in subsections (c)(5)(B) and (c)(9)(C).

(10) Return to work criteria.

(A) COVID-19 cases with COVID-19 symptoms shall not return to work until:

1. At least 24 hours have passed since a fever of 100.4 degrees Fahrenheit or higher has resolved without the use of fever-reducing medications; and
2. COVID-19 symptoms have improved; and
3. At least 10 days have passed since COVID-19 symptoms first appeared.

(B) COVID-19 cases who tested positive but never developed COVID-19 symptoms shall not return to work until a minimum of 10 days have passed since the date of specimen collection of their first positive COVID-19 test.

(C) Once a COVID-19 case has met the requirements of subsection (c)(10)(A) or (B), as applicable, a negative COVID-19 test shall not be required for an employee to return to work.

(D) Persons who had a close contact may return to work as follows:

1. Persons who had a close contact but never developed any COVID-19 symptoms may return to work when 10 days have passed since the last known close contact.
2. Persons who had a close contact and developed any COVID-19 symptom cannot return to work until the requirements of subsection (c)(10)(A) have been met, unless all of the following are true:
  - a. The person tested negative for COVID-19 using a polymerase chain reaction (PCR) COVID-19 test with specimen taken after the onset of

symptoms; and

b. At least 10 days have passed since the last known close contact; and

c. The person has been symptom-free for at least 24 hours, without using fever-reducing medications.

3. During critical staffing shortages, when there are not enough staff to provide safe patient care, essential critical infrastructure workers in the following categories may return after Day 7 from the date of last exposure if they have received a negative PCR COVID-19 test result from a specimen collected after Day 5:

a. Health care workers who did not develop COVID-19 symptoms;

b. Emergency response workers who did not develop COVID-19 symptoms; and

c. Social service workers who did not develop COVID-19 symptoms and who work face to face with clients in child welfare or assisted living.

(E) If an order to isolate, quarantine, or exclude an employee is issued by a local or state health official, the employee shall not return to work until the period of isolation or quarantine is completed or the order is lifted. If no period was specified, then the period shall be in accordance with the return to work periods in subsection (c)(10)(A), (c)(10)(B), or (c)(10)(D), as applicable.

(F) If no violations of local or state health officer orders for isolation, quarantine, or exclusion would result, the Division may, upon request, allow employees to return to work on the basis that the removal of an employee would create undue risk to a community's health and safety. In such cases, the employer shall develop, implement, and maintain effective control measures to prevent transmission in the workplace including providing isolation for the employee at the workplace and, if isolation is not feasible, the use of respirators in the workplace.

Note: Authority cited: Section 142.3, Labor Code. Reference: Sections 142.3, 144.6 and 6409.6, Labor Code.

## HISTORY

1. New section filed 11-30-2020 as an emergency; operative 11-30-2020. Emergency expiration extended 60 days (Executive Order N-40-20) plus an additional 60 days (Executive Order N-71-20) (Register 2020, No. 49). A Certificate of Compliance must be transmitted to OAL by 10-1-2021 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 74, No. 43.
2. Governor Newsom issued Executive Order N-84-20 (2019 CA EO 84-20), dated December 14, 2020, which suspended certain provisions relating to the exclusion of COVID-19 cases from the workplace.
3. Editorial correction of punctuation errors in subsections (b)(1), (c)(3)(D), (c)(10)(C) and (c)(10)(E) (Register 2021, No. 24).
4. New section refiled with amendments 6-17-2021 as an emergency; operative 6-17-2021 pursuant to Executive Order N-09-21 (Register 2021, No. 25). Exempt from the APA pursuant to Government Code sections 8567, 8571 and 8627 (Executive Order N-09-21). Emergency expiration extended 60 days (Executive Order N-40-20) plus an additional 60 days (Executive Order N-71-20). A Certificate of Compliance must be transmitted to OAL by 1-13-2022 or emergency language will be repealed by operation of law on the following day.

[!\[\]\(6605b201d6f14d9b3bcb8ab5f274d107\_img.jpg\) Go Back to General Industry Safety Orders. Introduction](#)



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## §3205.1. Multiple COVID-19 Infections and COVID-19 Outbreaks.

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### (a) Scope.

(1) This section applies to a workplace covered by section 3205 if three or more employee COVID-19 cases within an exposed group, as defined by section 3205(b), visited the workplace during their high-risk exposure period at any time during a 14-day period.

(2) This section shall apply until there are no new COVID-19 cases detected in the exposed group for a 14-day period.

### (b) COVID-19 testing.

(1) The employer shall make COVID-19 testing available at no cost to its employees within the exposed group, during employees' paid time, except:

(A) Employees who were not present at the workplace during the relevant 14-day period(s) under subsection (a).

(B) Employees who were fully vaccinated before section 3205.1 became applicable to the workplace and who do not have COVID-19 symptoms.

(C) For COVID-19 cases who did not develop COVID-19 symptoms after returning to work pursuant to subsections 3205(c)(10)(A) or (B), no testing is required for 90 days after the initial onset of COVID-19 symptoms or, for COVID-19 cases who never developed symptoms, 90 days after the first positive test.

(2) COVID-19 testing shall consist of the following:

(A) Immediately upon being covered by this section, testing shall be made available to all employees in the exposed group and then again one week later. Negative COVID-19 test results of employees with COVID-19 exposure shall not impact the duration of any quarantine, isolation, or exclusion period required by, or orders issued by, the local health department.

(B) After the first two COVID-19 tests required by subsection (b)(2)(A), employers shall make COVID-19 testing available once a week at no cost, during paid time, to all employees in the exposed group who remain at the workplace, or more frequently if recommended by the local health department, until this section no longer applies pursuant to subsection (a)(2).

(c) Employers shall make additional testing available at no cost to employees, during employees' paid time, when deemed necessary by the Division through the Issuance of Order to Take Special Action, in accordance with title 8, section 332.3.

(d) The employer shall continue to comply with all applicable provisions of section 3205, and shall also do the following:

(1) Employees in the exposed group shall wear face coverings when indoors, or when outdoors and less than six feet from another person, unless one of the exceptions in subsection 3205(c)(6)(D) applies.

(2) Employers shall give notice to employees in the exposed group of their right to request a respirator for voluntary use under subsection 3205(c)(7)(D)2., if they are not fully vaccinated.

(3) Employers shall evaluate whether to implement physical distancing of at least six feet between persons or, where six feet of physical distancing is not feasible, the use of cleanable solid partitions of sufficient size to reduce COVID-19 transmission.

(e) COVID-19 Investigation, review and hazard correction. The employer shall immediately perform a review of potentially relevant COVID-19 policies, procedures, and controls and

implement changes as needed to prevent further spread of COVID-19. The investigation and review shall be documented and include:

(1) Investigation of new or unabated COVID-19 hazards including the employer's leave policies and practices and whether employees are discouraged from remaining home when sick; the employer's COVID-19 testing policies; insufficient outdoor air; insufficient air filtration; and lack of physical distancing.

(2) The review shall be updated every 30 days that this section continues to apply, in response to new information or to new or previously unrecognized COVID-19 hazards, or when otherwise necessary.

(3) The employer shall implement changes to reduce the transmission of COVID-19 based on the investigation and review required by subsections (e)(1) and (e)(2). The employer shall consider moving indoor tasks outdoors or having them performed remotely, increasing outdoor air supply when work is done indoors, improving air filtration, increasing physical distancing as much as feasible, requiring respiratory protection in compliance with section 5144, and other applicable controls.

(f) In buildings or structures with mechanical ventilation, employers shall filter recirculated air with Minimum Efficiency Reporting Value (MERV) 13 or higher efficiency filters if compatible with the ventilation system. If MERV-13 or higher filters are not compatible with the ventilation system, employers shall use filters with the highest compatible filtering efficiency. Employers shall also evaluate whether portable or mounted High Efficiency Particulate Air (HEPA) filtration units or other air cleaning systems would reduce the risk of transmission and, if so, shall implement their use to the degree feasible.

Note: Authority cited: Section 142.3, Labor Code. Reference: Sections 142.3 and 144.6, Labor Code.

## HISTORY

1. New section filed 11-30-2020 as an emergency; operative 11-30-2020. Emergency expiration extended 60 days (Executive Order N-40-20) plus an additional 60 days (Executive Order N-71-20) (Register 2020, No. 49). A Certificate of Compliance must be transmitted to OAL by 10-1-2021 or emergency language will be repealed by operation of law on the following day.

2. New section refiled with amendments 6-17-2021 as an emergency; operative 6-17-2021 pursuant to Executive Order N-09-21 (Register 2021, No. 25). Exempt from the APA pursuant to Government Code sections 8567, 8571 and 8627 (Executive Order N-09-21).Emergency

expiration extended 60 days (Executive Order N-40-20) plus an additional 60 days (Executive Order N-71-20). A Certificate of Compliance must be transmitted to OAL by 1-13-2022 or emergency language will be repealed by operation of law on the following day.

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## §3205.2. Major COVID-19 Outbreaks.

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### (a) Scope.

(1) This section applies to any workplace covered by section 3205 if 20 or more employee COVID-19 cases in an exposed group, as defined by section 3205(b), visited the workplace during their high-risk exposure period within a 30-day period.

(2) This section shall apply until there are fewer than three COVID-19 cases detected in the exposed group for a 14-day period.

(b) Employers shall continue to comply with section 3205.1, except that the COVID-19 testing described in section 3205.1(b) shall be made available to all employees in the exposed group, regardless of vaccination status, twice a week or more frequently if recommended by the local health department.

(c) In addition to the requirements of sections 3205 and 3205.1, the employer shall take the following actions:

(1) The employer shall provide a respirator for voluntary use in compliance with subsection 5144(c)(2) to employees in the exposed group and shall determine the need for a respiratory

protection program or changes to an existing respiratory protection program under section 5144 to address COVID-19 hazards.

(2) Any employees in the exposed group who are not wearing respirators required by the employer and used in compliance with section 5144 shall be separated from other persons by at least six feet, except where an employer can demonstrate that six feet of separation is not feasible, and except for momentary exposure while persons are in movement. Methods of physical distancing include: telework or other remote work arrangements; reducing the number of persons in an area at one time, including visitors; visual cues such as signs and floor markings to indicate where employees and others should be located or their direction and path of travel; staggered arrival, departure, work, and break times; and adjusted work processes or procedures, such as reducing production speed, to allow greater distance between employees. When it is not feasible to maintain a distance of at least six feet, individuals shall be as far apart as feasible.

(3) At work stations where an employee in the exposed group is assigned to work for an extended period of time, such as cash registers, desks, and production line stations, and where the physical distancing requirement in subsection (c)(2) is not maintained at all times, the employer shall install cleanable solid partitions that effectively reduce transmission between the employee and other persons.

(4) The employer shall evaluate whether to halt some or all operations at the workplace until COVID-19 hazards have been corrected.

(5) Any other control measures deemed necessary by the Division through the Issuance of Order to Take Special Action, in accordance with title 8 section 332.3.

Note: Authority cited: Section 142.3, Labor Code. Reference: Sections 142.3 and 144.6, Labor Code.

## HISTORY

1. New section filed 11-30-2020 as an emergency; operative 11-30-2020. Emergency expiration extended 60 days (Executive Order N-40-20) plus an additional 60 days (Executive Order N-71-20) (Register 2020, No. 49). A Certificate of Compliance must be transmitted to OAL by 10-1-2021 or emergency language will be repealed by operation of law on the following day.

2. New section refiled with amendments 6-17-2021 as an emergency; operative 6-17-2021 pursuant to Executive Order N-09-21 (Register 2021, No. 25). Exempt from the APA pursuant to Government Code sections 8567, 8571 and 8627 (Executive Order N-09-21). Emergency

expiration extended 60 days (Executive Order N-40-20) plus an additional 60 days (Executive Order N-71-20). A Certificate of Compliance must be transmitted to OAL by 1-13-2022 or emergency language will be repealed by operation of law on the following day.

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California Department of Industrial Relations  
Division of Occupational Safety & Health

## **UPDATE - COVID-19 Prevention Emergency Temporary Standards** **What Employers Need to Know About the December 16 Standards**

**December 16, 2021**

On December 16, the Occupational Safety and Health Standards Board readopted the Cal/OSHA COVID-19 Prevention Emergency Temporary Standards (ETS) for the second time. These emergency standards include important revisions to make the workplace rules consistent with the latest requirements and recommendations from the California Department of Public Health (CDPH). The emergency standards take effect on **January 14, 2022**, and apply to most workers in California not covered by the [Aerosol Transmissible Diseases standard](#).

### **Some important requirements that remain unchanged in the COVID-19 Emergency Temporary Standards:**

- Employers must establish, implement, and maintain an effective written COVID-19 Prevention Program that includes:
  - Identifying and evaluating employee exposures to COVID-19 health hazards.
  - Implementing effective policies and procedures to correct unsafe and unhealthy conditions.
  - Allowing adequate time for handwashing and cleaning frequently touched surfaces and objects.
- Employers must provide effective training and instruction to employees on how COVID-19 is spread, infection prevention techniques, and information regarding COVID-19-related benefits that affected employees may be entitled to under applicable federal, state, or local laws.

### **Important revisions to the COVID-19 Prevention Emergency Temporary Standards include:**

#### **Investigating and responding to COVID-19 cases in the workplace**

Employers must continue to properly notify employees, employee representatives and any other workers at a worksite of possible COVID-19 exposures within one business day. This section was updated to give employers more clear instructions on how to notify workers who were at the same worksite as the COVID-19 case during the high-risk exposure period.

#### **Face Coverings**

Employees who are exempted from wearing a face covering due to a medical or mental health condition, or disability and cannot wear a non-restrictive alternative must physically distance at least six feet from others and either be fully vaccinated or tested at least weekly for COVID-19.

**Note:** The testing must be during paid time and at no cost to the employee.

*(continued on next page)*



## Testing and Exclusion

- Employers are now required to make COVID-19 testing available at no cost and during paid time to employees who were fully vaccinated before the “close contact” with a COVID-19 case occurred, even if they are asymptomatic.
- During outbreaks and major outbreaks, employers must now make weekly testing (outbreaks) or twice-weekly testing (major outbreaks) available to asymptomatic fully vaccinated employees in the exposed group
- Employees who have recently recovered from COVID-19 and those who are fully vaccinated are not required to be excluded from the workplace after “close contact” but must wear a face covering and maintain six feet of physical distancing for 14 calendar days following the last date of contact.

## Return to Work Criteria

The period of time before an employee can return to work after “close contact” or COVID-19 illness has been revised to be consistent with current CDPH guidelines. These time frames will automatically update if CDPH updates their guidelines pursuant to the Governor’s executive order.

## Definitions

- “Worksite” now specifically excludes the employee’s personal residence, locations where an employee works alone, and remote work locations chosen by the employee.
- Definitions revised to be more consistent with federal OSHA, including:
  - “COVID-19 test” now includes specific instructions for workers using a test at home with self-read results. The employer or a telehealth professional must observe the test results.
  - “Face coverings” was updated to include more specific detail on the different types of acceptable face coverings.
  - “Fully vaccinated,” now mentions the minimal amount of time workers need to wait between the first and second shot of a two-dose vaccine.

This guidance is an overview, for full requirements see Title 8 sections [3205](#), [3205.1](#), [3205.2](#), [3205.3](#), [3205.4](#)





## COVID-19

We have the tools to  
**Fight Omicron**



# How to Protect Yourself & Others

Updated Nov. 29, 2021

CDC has updated isolation and quarantine recommendations for the public. These recommendations do not apply to [healthcare personnel](#) and do not supersede state, local, tribal, or territorial laws, rules, and regulations. Read [CDC's media statement](#). [Spanish](#)

## Protect Family Members

Some members in your family may need to continue to take steps to protect themselves from COVID-19, including

- Anyone not fully vaccinated, including children under 5 years who are not eligible for COVID-19 vaccines.
- People with weakened immune systems or underlying medical conditions.



[Protect Your Family](#)



## Get Vaccinated

- Authorized COVID-19 vaccines can help protect you from COVID-19.
- You should get a [COVID-19 vaccine as soon as you can](#).
- [Once you are fully vaccinated](#), you may be able to start doing some things that you had stopped doing because of the pandemic.



## Wear a mask

- Everyone 2 years or older who is not fully vaccinated should [wear a mask](#) in indoor public places.
- In general, you do not need to wear a mask in outdoor settings.
  - In areas with [high numbers of COVID-19 cases](#), consider wearing a mask in crowded outdoor settings and for activities with [close contact](#) with others who are not fully vaccinated.
- People who have a condition or are taking medications that weaken their immune system may not be fully protected even if they are fully vaccinated. They should continue to take all [precautions recommended for unvaccinated people, including wearing a well-fitted mask](#), until advised otherwise by their healthcare provider.
- If you are fully vaccinated, to maximize protection and prevent possibly spreading COVID-19 to others, wear a mask indoors in public if you are in an area [of substantial or high transmission](#). [Wearing a mask over your nose and mouth is required](#) on planes, buses, trains, and other forms of public transportation traveling into, within, or out of the United States and while indoors at U.S. transportation hubs such as airports and stations. Travelers are not required to wear a mask in outdoor areas of a conveyance (like on open deck areas of a ferry or the uncovered top deck of a bus).



## COVID-19 County Check

Find community transmission levels and masking guidance by county.

Select a Location



### Stay 6 feet away from others

- **Inside your home**
  - Avoid close contact with people who are sick.
  - If possible, maintain 6 feet between the person who is sick and other household members.
- **Outside your home**
  - Remember that some people without symptoms may be able to spread virus.
  - Stay at least 6 feet (about 2 arm lengths) from other people, especially if you are at higher risk of getting very sick.



### Avoid crowds and poorly ventilated spaces

- Being in crowded places like restaurants, bars, fitness centers, or movie theaters puts you at higher risk for COVID-19.
- Avoid indoor spaces that do not offer fresh air from the outdoors as much as possible.
- If indoors, bring in fresh air by opening windows and doors, if possible.



### Test to prevent spread to others

- Testing can give you information about your risk of spreading COVID-19.
- You can choose from many different types of tests.
- Regardless of the test type you select, a positive test result means that you have an infection and should isolate and inform your close contacts to avoid spreading disease to others.
- Over-the-counter self-tests can be used at home or anywhere,

are easy to use, and produce rapid results. Anyone can use self-tests, regardless of vaccination status or whether they have symptoms or not.

- Consider using a self-test before joining indoor gatherings with others who are not in your household.
  - A positive self-test result means that you have an infection and should avoid indoor gatherings to reduce the risk of spreading disease to someone else.
  - A negative self-test result means that you may not have an infection. Repeating the test with at least 24 hours between tests will increase the confidence that you are not infected.
  - Ask your healthcare provider if you need help interpreting your test results.



## Wash your hands often

- **Wash your hands** often with soap and water for at least 20 seconds especially after you have been in a public place, or after blowing your nose, coughing, or sneezing.
- It's especially important to wash your hands:
  - Before eating or preparing food
  - Before touching your face
  - After using the restroom
  - After leaving a public place
  - After blowing your nose, coughing, or sneezing
  - After handling your mask
  - After changing a diaper
  - After caring for someone sick
  - After touching animals or pets
- If soap and water are not readily available, **use a hand sanitizer that contains at least 60% alcohol**. Cover all surfaces of your hands and rub them together until they feel dry.
- **Avoid touching your eyes, nose, and mouth** with unwashed hands.




## Cover coughs and sneezes

- **If you are wearing a mask:** You can cough or sneeze into your mask. Put on a new, clean mask as soon as possible and wash your hands.
- **If you are not wearing a mask:**
  - Always cover your mouth and nose with a tissue when you cough or sneeze, or use the inside of your elbow and do not spit.
  - Throw used tissues in the trash.
  - Immediately **wash your hands** with soap and water for at least 20 seconds. If soap and water are not readily available, clean your hands with a hand sanitizer that contains at least 60% alcohol.



## Clean and disinfect

- Clean high touch surfaces regularly or as needed and after you have visitors in your home. This includes tables, doorknobs, light switches, countertops, handles, desks, phones, keyboards, toilets, faucets, and sinks.
- **If someone is sick or has tested positive for COVID-19, disinfect frequently touched surfaces.**
  - Use a household disinfectant product from [EPA's List N: Disinfectants for Coronavirus \(COVID-19\)](#)  according to manufacturer's labeled directions.
  - **If surfaces are dirty, clean them** using detergent or soap and water prior to disinfection.



## Monitor your health daily

- **Be alert for symptoms:**
  - Watch for fever, cough, shortness of breath, or **other symptoms of COVID-19.**
  - **Take your temperature** if symptoms develop.
  - Don't take your temperature within 30 minutes of exercising or after taking medications that could lower your temperature, like acetaminophen.
  - Follow **CDC guidance** if symptoms develop.
- Monitoring symptoms is especially important if you are running errands, going into the office or workplace, and in settings where it may be difficult to keep a physical distance of 6 feet.

### Additional Resources

Help protect yourself and others

[PDF - 263 KB, 1 page]

Slow the Spread of COVID-19

[PDF - 1 page]

How to Protect Yourself and Others

English

Spanish

Stop the Spread of Germs

[PDF - 537 KB, 1 page]

## Related Pages

[Prevent Getting Sick](#)

[Symptoms](#)

[How COVID-19 Spreads](#)

[If You Are Sick or Caring for Someone](#)

[People at Increased Risk](#)

[Frequently Asked Questions](#)

[Hand Sanitizer Use](#)

[Quarantine and Isolation](#)

Last Updated Nov. 29, 2021  
Content source: [National Center for Immunization and Respiratory Diseases \(NCIRD\)](#), Division of Viral Diseases





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**COUNTY OF ORANGE HEALTH OFFICER'S  
ORDERS AND STRONG RECOMMENDATIONS**

(Revised January 14, 2022)

In light of the recent quarantine and isolation guidelines announced/issued by Centers for Disease Control and Preventions (CDC) and California Department of Public Health (CDPH), the following Orders and Strong Recommendations shall revise and replace the prior Orders and Strong Recommendations of the County Health Officer that were issued on January 4, 2022. The Orders and Strong Recommendations issued on January 4, 2022, are no longer in effect as of January 14, 2022.

Pursuant to California Health and Safety Code sections 101030, 101040, 101470, 120175, and 120130, the County Health Officer for County of Orange orders and strongly recommends the following:

**ORDERS**

Effective immediately, and continuing until further notice, the following shall be in effect in unincorporated and incorporated territories of Orange County, California:

**I. Self-Isolation and Self-Quarantine Orders**

NOTE: Refer to the Definition Section below for the meaning of terms used in this isolation and quarantine orders, e.g., exposure to COVID-19, symptoms, etc.

**A. Self-isolation of Persons with COVID-19**

Order and Strong Recommendations of the County of Orange Health Officer  
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*NOTE: This self-isolation order DOES NOT in any way restrict access by first responders to an isolation site during an emergency.*

1. Persons who test positive for COVID-19. Persons who test positive for COVID-19 shall immediately isolate themselves in their home or another suitable place for at least 5 days. They may discontinue self-isolation after day 5 from the date they test positive IF:
  - COVID-19 symptoms are not present and a diagnostic specimen collected on day 5 or later tests negative.
    - An antigen test, nucleic acid amplification test (NAAT), or LAMP test are acceptable, however, if it is recommended that persons use an antigen test for ending isolation. Use of Over-the-Counter tests are also acceptable to end isolation.
  - If unable to test, choose not to test, or test positive by repeat testing, and symptoms are not present or not resolving, isolation shall continue through day 10 and may end after 10 days regardless of whether symptoms are present or resolving.
  - They should continue to wear a well-fitting mask at all times around other people through at least day 10.
2. Persons who have symptoms. Persons who have COVID-19 symptomatic shall immediately isolate themselves in their home or another suitable place for 5 days from the date of their symptom onset. They may end isolation IF:
  - A diagnostic specimen collected as early as the onset of their symptoms or later tests negative.
    - An antigen test, nucleic acid amplification test (NAAT), or LAMP test are acceptable, however, if it is recommended that persons use an antigen test for ending isolation. Use of Over-the-Counter tests are also acceptable to end isolation.

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- If fever is present, isolation shall continue until fever resolves without the use of fever-reducing medications.
- If symptoms other than fever are not resolving, isolation shall continue (i) until symptoms are resolving or (ii) for 10 days regardless of whether symptoms are resolving or not.
- If unable to test, choose not to test, or test positive by repeat testing, and symptoms are not present or not resolving, isolation shall continue through day 10 and may end after 10 days regardless of whether symptoms are present or resolving.
- They should continue to wear a well-fitting mask at all times around other people through at least day 10.

3. Additional Considerations for Self-Isolation.

- A person who is self-isolated may not leave his or her place of isolation except to receive necessary medical care.
- If a more specific and individualized isolation order is issued by the County Health Officer for any county resident, the resident shall follow the specific order instead of the order herein.
- People who are severely ill with COVID-19 might need to stay in self-isolation longer than 5 days and up to 20 days after symptoms first appeared. People with weakened immune systems should talk to their healthcare provider for more information.

**B. Exemption from Isolation**

- Health care providers who (i) work at general acute care hospitals, acute psychiatric hospitals, and skilled nursing facilities; (ii) have tested positive for COVID-19; and (iii) do not have any symptoms are not required to isolate per this Order. This exemption is effective through February 1, 2022. They shall wear an N95 respirator for source control. Facilities implementing this exemption (i) must have made every attempt to bring in additional registry or contract staff and must have considered

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modifications to non-essential procedures; and (ii) should preferably assign them to work with COVID-19 positive patients.

**C. Self-Quarantine of Persons Exposed to COVID-19**

*NOTE: The self-quarantine orders and exemptions below DO NOT in any way restrict access by first responders to a quarantine site during an emergency.*

1. Not-up-to-date personas. Persons who (i) do not have symptoms; (ii) are not-up-to-date with COVID-19 vaccination; and (iii) know they have been exposed to COVID-19 shall quarantine for at least 5 days after their most recent exposure to COVID-19. Self-quarantine may end after day 5 IF:
  - Person has not developed any symptoms and a diagnostic specimen collected on day 5 or later tests negative.
    - Use of Over-the-Counter tests are acceptable to end quarantine.
  - If the person is unable to test or chooses not to test, s/he shall quarantine for 10 days after most recent exposure to COVID-19.
  - Additionally, the person should continue to wear a well-fitting mask around other people through at least day 10 after most recent exposure to COVID-19.

**D. Exemptions from Quarantine**

1. Asymptomatic up-to-date persons. Persons who (i) are up-to-date with COVID-19 vaccinations prior to their exposure to COVID-19; and (ii) have not developed any symptoms since their exposure to COVID-19 are not required to quarantine.
  - They should test on day 5 from date of exposure to COVID-19. If they test positive, they shall immediately self-isolate, as ordered above, and contact their healthcare provider with any questions regarding their care.
  - They should continue to wear a well-fitting mask at all times around other people through at least day 10 after their exposure to COVID-19.
2. Asymptomatic persons previously infected. Persons who (i) are exposed to COVID-19; (ii) test positive for COVID-19 before their new, recent exposure to COVID-19; and (iii) it has been less than 3 months since they started having

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symptoms from that previous infection (or since their first positive COVID-19 test if asymptomatic), are not required to quarantine per this Order, as long as they have not had any new symptoms since their recent exposure to COVID-19.

3. Exposed Asymptomatic Emergency Responders and Health Care Workers. During critical staffing shortages, exposed emergency responders and health care workers who do not have any symptoms are not required to quarantine. They should wear a well-fitting mask at all times when around others for at least 10 days after their most recent exposure to COVID-19 and monitor for symptoms of COVID-19.
4. Non-health care provider and non-emergency workers. All non-health care provider and non-emergency responder workers (i) who are fully vaccinated and eligible for a booster shot but have not yet obtained their booster shot; and (ii) who do not have symptoms are not required to quarantine per this Order if:
  - A diagnostic specimen collected on day 5 or later tests negative (use of Over-the-Counter tests are acceptable); and
  - The worker wears a well-fitting mask around others for 10 days from date of last exposure to COVID-19; and
  - The worker does not develop any symptoms.
5. Quarantine of Students in both Private and Public Transitional Kindergarten through Grade 12. Schools/school districts may choose from between the following two models for students who are exposed to COVID-19:

Option 1. Individual Management – Students in both private and public transitional kindergarten through grade 12 shall follow the isolation and self-quarantine orders above with the following Modified Quarantine exemption:

Modified Quarantine. If a not-up-to-date student is exposed to COVID-19 and both were wearing mask then the exposed student may continue to attend school for in-person instruction during the duration of his or her quarantine period if the following conditions are met:

  - The exposed student does not develop any symptoms; AND

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- The exposed student continues to appropriately wear well-fitting mask; AND
- The exposed student undergoes testing for COVID-19 at least twice during the 5 days quarantine period (use of Over-the-Counter tests are acceptable); AND
- The exposed student refrains from participation in all extracurricular activities at school, including sports, and activities within the community setting for the duration of his or her quarantine period. The exposed student may participate in all required instructional components of the school day, except activities where a mask cannot be worn, such as while playing certain musical instruments. The exposed student may also eat meals on campus.
- If the exposed student is unable to test or chooses not to test, s/he shall quarantine for 10 days after most recent exposure to COVID-19.

Option 2. Group Tracing Approach – For this option, schools will notify groups of students. Groups of students mean those students who spent more than 15 minutes (over a 24-hour period) in the same indoor airspace (e.g., classroom) with someone who has COVID-19, regardless of their vaccination status or previous COVID-19 disease. Notification would be to groups of exposed students (e.g., classmates, teammates, cohorts) rather than the individual students identified in Option 1 (Individual Management), above. The notification will provide the following information:

- Exposure to COVID-19;
- Last known date of exposure to COVID-19;
- The option to continue to attend school so long as they are free of any symptoms (those who develop symptoms shall isolate per the isolation order, above);

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- Recommendation to undergo testing 3 to 5 days after most recent exposure to COVID-19;
- Shall wear a well-fitting mask;
- If unable to wear a mask due to a documented exemption the student must quarantine at home until the student has obtained a negative result for the test administered on day 3 to 5 after most recent exposure to COVID-19.
- Students so notified who participate in activities where it is not practicable to participate with a mask on will refrain from that activity until negative results is obtained from the test administered on day 3 to -5 after most recent last exposure to COVID-19. If they are participating in routine testing program, at least once per week they may continue with all activities, so long as they remain asymptomatic and test negative.

In the event of wide-scale and or repeated exposures, broader (grade-wide or campus-wide) once weekly testing for COVID-19 may be chosen in lieu of group notification until such time as exposure events become less frequent.

#### **E. Definitions**

The following definitions shall govern the meaning of terms in the isolation and quarantine orders, above.

1. *Symptom(s)*. Whenever the term “symptom” is used, it shall mean COVID-19 symptom. People with COVID-19 have had a wide range of symptoms reported – ranging from mild symptoms to severe illness. Symptoms may appear 2-14 days after exposure to the virus. Anyone can have mild to severe symptoms. People with these symptoms may have COVID-19:
  - Fever or chills
  - Cough
  - Shortness of breath or difficulty breathing
  - Fatigue

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- Muscle or body aches
- Headache
- New loss of taste or smell
- Sore throat
- Congestion or runny nose
- Nausea or vomiting
- Diarrhea

The list above does not include all possible symptoms.

2. *Up-to-date with COVID-19 vaccination.* Persons 12 years and older are considered up-to-date with their COVID-19 vaccination if they have completed a primary series of COVID-19 vaccine and have either received a booster shot or are not yet recommended to receive a booster dose according to current CDC guidance. Those less than 12 years of age are considered up-to-date with their COVID-19 Vaccinations if they have completed their primary series according to CDC guidance:

CDC COVID-19 Primary Vaccine Series Guidance

CDC COVID-19 Vaccine Booster Shot Guidance

3. *Not-up-to-date with COVID-19 vaccination.* All persons who do not meet the criteria under up-to-date with COVID-19 vaccination, as defined above, are considered not-up-to-date with their COVID-19 vaccination.
4. *Exposed to COVID-19 or exposure to COVID-19.* These terms mean to be within 6 feet of someone who has COVID-19 for a cumulative total of 15 minutes or more over a 24-hour period.
5. *Emergency responder.* This term includes military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency



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management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

6. *Health care provider.* This term includes physicians; psychiatrists; nurses; nurse practitioners; nurse assistants; medical technicians; any other person who is employed to provide diagnostic services, preventive services, treatment services or other services that are integrated with and necessary to the provision of patient care and, if not provided, would adversely impact patient care; and employees who directly assist or are supervised by a direct provider of diagnostic, preventive, treatment, or other patient care services; and employees who do not provide direct health care services to a patient but are otherwise integrated into and necessary to the provision those services – for example, a laboratory technician who processes medical test results to aid in the diagnosis and treatment of a health condition. A person is not a health care provider merely because his or her employer provides health care services or because he or she provides a service that affects the provision of health care services. For example, IT professionals, building maintenance staff, human resources personnel, cooks, food services workers, records managers, consultants, and billers are not health care providers, even if they work at a hospital of a similar health care facility.

## **II. Face-Covering Order:**

- **Wear a Cloth Face-Covering.** To help prevent the spread of droplets containing COVID-19, all County residents and visitors shall wear face coverings in accordance with and as required by the Guidance for the Use of Face Coverings issued by CDPH, effective December 15, 2021. The Guidance is attached herein as Attachment "A" and can be found at:

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<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx>.

The Guidance orders, as follows:

Masking Requirements.

Masks are required for all individuals in all indoor public settings, regardless of vaccination status from December 15, 2021, through February 15, 2022. Full guidance can be found at: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Get-the-Most-out-of-Masking.aspx>.

In workplaces, employers are subject to the Cal/OSHA COVID-19 Emergency Temporary Standards (ETS) or in some workplaces the Cal/OSHA Aerosol Transmissible Diseases (ATD) Standard and should consult those regulations for additional applicable requirements.

See State Health Officer Order, issued on July 26, 2021 (<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Unvaccinated-Workers-In-High-Risk-Settings.aspx>), for a full list of high-risk congregate and other healthcare settings where surgical masks are required for unvaccinated workers, and recommendations for respirator use for unvaccinated workers in healthcare and long-term care facilities in situations or settings not covered by Cal OSHA ETS or ATD.

No person can be prevented from wearing a mask as a condition of participation in an activity or entry into a business.

Exemptions to masks requirements.

The following individuals are exempt from wearing masks at all times:

- Persons younger than two years old. Very young children must not wear a mask because of the risk of suffocation.
- Persons with a medical condition, mental health condition, or disability that prevents wearing a mask. This includes persons with a medical condition

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for whom wearing a mask could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a mask without assistance.

- Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
- Persons for whom wearing a mask would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.

The County Health Officer strongly recommends that all mask wearers consistently and correctly wear a mask that offers good filtration to get the best protection. To improve efficacy, the mask should fit to minimize gaps between the face and mask. The mask should also fully cover the nose and mouth. If wearing a fabric face covering, three layers should be worn to offer better filtration.

The County Health Officer also strongly recommends wearing a face shield for members of the public who cannot wear a face covering due to a medical condition or other exemption (except for children younger than 2 years old), although they may not work as well as face coverings in their ability to prevent the spread of COVID-19 to others. A cloth “drape” should be attached to the bottom edge of the face shield and tucked into the shirt to minimize gaps between the face and face shield.

### **III. Vaccination and Testing for COVID-19 Orders:**

#### **1. COVID-19 Vaccination for Workers and Service Providers of Certain Facilities.**

To help prevent transmission of COVID-19, all workers who provide services or work in facilities described below shall comply with the COVID-19 vaccination and booster dose requirements as set forth in the December 22, 2021, State Health Officer Order. A copy of the State Health Officer Order is attached herein as Attachment "B" and can be found at the following link:

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<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement.aspx>

Facilities covered by this order include:

- General Acute Care Hospitals
- Skilled Nursing Facilities (including Subacute Facilities)
- Intermediate Care Facilities
- Acute Psychiatric Hospitals
- Adult Day Health Care Centers
- Program of All-Inclusive Care for the Elderly (PACE) and PACE Centers
- Ambulatory Surgery Centers
- Chemical Dependency Recovery Hospitals
- Clinics & Doctor Offices (including behavioral health, surgical)
- Congregate Living Health Facilities
- Dialysis Centers
- Hospice Facilities
- Pediatric Day Health and Respite Care Facilities
- Residential Substance Use Treatment and Mental Health Treatment Facilities

The word, "worker," as used in this Order shall have the same meaning as defined in the State Health Officer's Order, dated December 22, 2021. *See* <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement.aspx>

2. **Requirements for COVID-19 Vaccination Status Verification, COVID-19 Testing, and Masking for Certain Facilities.**

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To help prevent transmission of COVID-19, all facilities described below shall comply with the State Health Officer Order, effective August 9, 2021. A copy of the State Health Officer Order is attached herein as Attachment "C" and can be found at the following link:

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Unvaccinated-Workers-In-High-Risk-Settings.aspx>

Facilities covered by this order include:

Acute Health Care and Long-Term Care Settings:

- General Acute Care Hospitals
- Skilled Nursing Facilities (including Subacute Facilities)
- Intermediate Care Facilities

High-Risk Congregate Settings:

- Adult and Senior Care Facilities
- Homeless Shelters
- State and Local Correctional Facilities and Detention Centers

Other Health Care Settings:

- Acute Psychiatric Hospitals
- Adult Day Health Care Centers
- Adult Day Programs Licensed by the California Department of Social Services
- Program of All-Inclusive Care for the Elderly (PACE) and PACE Centers
- Ambulatory Surgery Centers
- Chemical Dependency Recovery Hospitals
- Clinics & Doctor Offices (including behavioral health, surgical)
- Congregate Living Health Facilities

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- Dental Offices
- Dialysis Centers
- Hospice Facilities
- Pediatric Day Health and Respite Care Facilities
- Residential Substance Use Treatment and Mental Health Treatment Facilities

3. **Requirements for COVID-19 Vaccine Status Verification and COVID-19 Testing for School Workers in Transitional Kindergarten through Grade 12.**

To prevent the further spread of COVID-19 in K-12 school settings, all public and private schools serving students in transitional kindergarten through grade 12 shall comply with the State Health Officer Order, effective August 12, 2021, regarding verification of COVID-19 vaccination status and COVID-19 testing of all workers. A copy of the State Health Officer Order is attached herein as Attachment "D" and can be found at the following link:

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Vaccine-Verification-for-Workers-in-Schools.aspx>

This Order does not apply to (i) home schools, (ii) child care settings, or (iii) higher education.

4. **Local Correctional Facilities and Detention Centers Health Care Worker Vaccination Requirement.**

To prevent the further spread of COVID-19 in local correctional facilities and detention centers, all individuals identified in the State Health Officer Order, effective December 22, 2021, shall comply with the State Health Officer's Order with regards to obtaining COVID-19 vaccination and booster doses. A copy of the State Health Officer Order is attached herein as Attachment "E" and can be found at the following link:

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<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement.aspx>

5. **Adult Care Facilities and Direct Care Worker Vaccination Requirements.**

To help prevent transmission of COVID-19, all individuals specified below shall comply with the COVID-19 vaccination and booster does requirements as set forth in the December 22, 2021, State Health Officer Order. A copy of the State Health Officer Order is attached herein as Attachment “F” and can be found at the following link:

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Adult-Care-Facilities-and-Direct-Care-Worker-Vaccine-Requirement.aspx>

Individuals covered by this order include:

- All workers who provide services or work in Adult and Senior Care Facilities licensed by the California Department of Social Services;
- All in-home direct care services workers, including registered home care aides and certified home health aides, except for those workers who only provide services to a recipient with whom they live or who are a family member of the recipient for whom they provide services;
- All waiver personal care services (WPCS) providers, as defined by the California Department of Health Care Services, and in-home supportive services (IHSS) providers, as defined by the California Department of Social Services, except for those workers who only provide services to a recipient with whom they live or who are a family member of the recipient for whom they provide services;
- All hospice workers who are providing services in the home or in a licensed facility; and
- All regional center employees, as well as service provider workers, who provide services to a consumer through the network of Regional Centers

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serving individuals with developmental and intellectual disabilities, except for those workers who only provide services to a recipient with whom they live or who are a family member of the recipient for whom they provide services.

**IV. Visiting Acute Health Care and Long-Term Care Setting Order:**

**Requirements for Visiting Acute Health Care and Long-Term Care Settings.**

To help prevent transmission of COVID-19, all acute health care and long-term care settings shall comply with the indoor visitation requirements set forth in the State Health Officer, effective January 7, 2022 through February 7, 2022. A copy of the State Health Officer Order is attached herein as Attachment "G" and can be found at the following link:

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Requirements-for-Visitors-in-Acute-Health-Care-and-Long-Term-Care-Settings.aspx>

**V. Seasonal Flu Vaccination Order:**

**Seasonal Flu Vaccination for Certain County Residents.**

All individuals who reside or work in Orange County and fall under one of the following categories, shall obtain the seasonal flu vaccination unless a medical or religious exemption applies: (i) current providers for congregate settings; (ii) current health care providers; and (iii) current emergency responders. However, nothing herein shall be construed as an obligation, on the part of employers, public or private, to require employees obtain the seasonal flu vaccination as a term or condition of employment.

- *Emergency responder* shall mean military or national guard; law enforcement officers; correctional institution personnel; fire fighters; emergency medical services personnel; physicians; nurses; public health personnel; emergency medical technicians; paramedics; emergency management personnel; 911 operators; child welfare workers and service providers; public works personnel; and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency; as well as individuals who work for such



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facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

- *Health care provider* shall mean physicians; psychiatrists; nurses; nurse practitioners; nurse assistants; medical technicians; any other person who is employed to provide diagnostic services, preventive services, treatment services or other services that are integrated with and necessary to the provision of patient care and, if not provided, would adversely impact patient care; and employees who directly assist or are supervised by a direct provider of diagnostic, preventive, treatment, or other patient care services; and employees who do not provide direct health care services to a patient but are otherwise integrated into and necessary to the provision those services – for example, a laboratory technician who processes medical test results to aid in the diagnosis and treatment of a health condition. A person is not a health care provider merely because his or her employer provides health care services or because he or she provides a service that affects the provision of health care services. For example, IT professionals, building maintenance staff, human resources personnel, cooks, food services workers, records managers, consultants, and billers are not health care providers, even if they work at a hospital of a similar health care facility.

### **STRONG RECOMMENDATIONS**

Effective immediately, and continuing until further notice, the following shall be in effect in unincorporated and incorporated territories in Orange County, California:

1. **For Vulnerable Populations.** In general, the older a person is, the more health conditions a person has, and the more severe the conditions, the more important it is to take preventive measures for COVID-19 such as getting vaccinated, including boosters, social distancing and wearing a mask when around people who don't live in the same household, and practicing hand hygiene. For more information see <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.
2. **COVID-19 Vaccination for County Residents.** All Orange County residents should receive COVID-19 vaccination in accordance with the Federal Food and Drug

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Administration (FDA) and CDC guidance unless a medical contraindication applies. Minors, who are eligible to receive COVID-19 vaccination in accordance with the applicable CDC guidelines, should be vaccinated in the presence of their parent or legal guardian.

3. **Seasonal Flu Vaccination for County Residents.** All County residents who are six months of age or older should obtain the seasonal flu vaccination unless a medical or religious exemption applies.
4. **COVID-19 Vaccination and Testing for Emergency Medical Technicians, Paramedics and Home Healthcare Providers.** To help prevent transmission of COVID-19, it is strongly recommended that all Emergency Medical Technicians, Paramedics, and Home Healthcare Providers (including In Home Supportive Services Program workers) are fully vaccinated by September 30, 2021.

Furthermore, it is strongly recommended that all unvaccinated Emergency Medical Technicians, Paramedics, and Home Healthcare Providers (including In Home Supportive Services Program workers) undergo at least twice weekly testing for COVID-19 until such time they are fully vaccinated.

#### **GENERAL PROVISIONS**

1. The Orders and Strong Recommendations, above, shall not supersede any conflicting or more restrictive orders issued by the State of California or federal government. If any portion of this document or the application thereof to any person or circumstance is held to be invalid, the remainder of the document, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of the orders and strong recommendations are severable.
2. The Orders contained in this document may be enforced by the Orange County Sheriff or Chiefs of Police pursuant to California Health and Safety Code section 101029, and California Government Code sections 26602 and 41601. A violation of a health order is subject to fine, imprisonment, or both (California Health and Safety Code section 120295).

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**REASONS FOR THE ORDERS AND STRONG RECOMMENDATIONS**

1. On February 26, 2020, the County of Orange Health Officer declared a Local Health Emergency based on an imminent and proximate threat to public health from the introduction of COVID-19 in Orange County.
2. On February 26, 2020, the Chairwoman of the Board of Supervisors, acting as the Chair of Emergency Management Council, proclaimed a Local Emergency in that the imminent and proximate threat to public health from the introduction of COVID-19 created conditions of extreme peril to the safety of persons and property within the territorial limits of Orange County.
3. On March 2, 2020, the Orange County Board of Supervisors adopted Resolutions No. 20-011 and No. 20-012 ratifying the Local Health Emergency and Local Emergency, referenced above.
4. On March 4, 2020, the Governor of the State of California declared a State of Emergency to exist in California as a result of the threat of COVID-19.
5. As of January 14, 2022, the County has reported a total of 430,675 recorded confirmed COVID-19 cases and 5,921 of COVID-19 related deaths.
6. Safe and effective authorized COVID-19 vaccines are recommended by the CDC. According to CDC, anyone infected with COVID-19 can spread it, even if they do NOT have symptoms. The novel coronavirus is spread in 3 ways:1) Breathing in air when close to an infected person who is exhaling small droplets and particles that contain the virus. 2) Having these small droplets and particles that contain virus land on the eyes, nose, or mouth, especially through splashes and sprays like a cough or sneeze. 3) Touching eyes, nose, or mouth with hands that have the virus on them. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.
7. CDC requires face coverings on planes, buses, trains, and other forms of public transportation traveling into, within, or out of the United States and in U.S. transportation

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hubs such as airports and stations. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html>.

8. The CDPH issued a revised Guidance for the Use of Face Coverings, effective December 15, 2021, available at: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx>
9. According to the CDC and CDPH, older adults, individuals with medical conditions, and pregnant and recently pregnant persons are at higher risk of severe illness when they contract COVID-19. See <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html>; see also <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/PublicHealthGuidanceSelfIsolationforOlderAdultsandThoseWhoHaveElevatedRisk.aspx>.
10. The Orders and the Strong Recommendations contained in this document are based on the following facts, in addition to the facts stated under the foregoing paragraphs: (i) Safe and effective FDA authorized COVID-19 vaccines have become widely available, but many Orange County residents have not yet had the opportunity to be vaccinated, or have not completed their vaccination series to be fully vaccinated; (ii) there are currently limited therapeutic options proven effective that consistently prevents the severe illness associated with COVID-19; (iii) the current consensus among public health officials for slowing down the transmission of and avoiding contracting COVID-19 is for unvaccinated persons to avoid gathering and practice social distancing, frequently wash hands with soap, wearing face covering and get vaccinated; (iv) some individuals who contract COVID-19 have no symptoms or have only mild symptoms and so are unaware that they carry the virus and are transmitting it to others; (v) current evidence shows that the novel coronavirus can survive on surfaces and can be indirectly transmitted between individuals; (vi) older adults and individuals with medical conditions are at higher risk of severe illness; (vii) sustained COVID-19 community transmission continues to occur; (viii) the age, condition, and health of a significant portion of Orange County's residents place them at risk for serious health complications, including hospitalization and death, from COVID-19; (ix) younger and otherwise healthy people are also at risk for serious negative health outcomes and for transmitting the novel coronavirus to others.

Order and Strong Recommendations of the County of Orange Health Officer

January 13, 2022

Page 21 of 22

11. The orders and strong recommendations contained in this document are necessary and less restrictive preventive measures to control and reduce the spread of COVID-19 in Orange County, help preserve critical and limited healthcare capacity in Orange County and save the lives of Orange County residents.
12. The California Health and Safety Code section 120175 requires the County of Orange Health Officer knowing or having reason to believe that any case of a communicable disease exists or has recently existed within the County to take measures as may be necessary to prevent the spread of the disease or occurrence of additional cases.
13. The California Health and Safety Code sections 101030 and 101470 require the county health officer to enforce and observe in the unincorporated territory of the county and within the city boundaries located with a county all of the following: (a) Orders and ordinances of the board of supervisors, pertaining to the public health and sanitary matters; (b) Orders, including quarantine and other regulations, prescribed by the department; and (c) Statutes relating to public health.
14. The California Health and Safety Code section 101040 authorizes the County of Orange Health Officer to take any preventive measure that may be necessary to protect and preserve the public health from any public health hazard during any "state of war emergency," "state of emergency," or "local emergency," as defined by Section 8558 of the Government Code, within his or her jurisdiction. "Preventive measure" means abatement, correction, removal, or any other protective step that may be taken against any public health hazard that is caused by a disaster and affects the public health.
15. The California Health and Safety Code section 120130 (d) authorizes the County of Orange Health Officer to require strict or modified isolation, or quarantine, for any case of contagious, infectious, or communicable disease, when such action is necessary for the protection of the public health.

**IT IS SO ORDERED:**

Date: January 12, 2022

Order and Strong Recommendations of the County of Orange Health Officer

January 13, 2022

Page 22 of 22

Clayton Chau MD, PhD

County Health Officer

County of Orange



## Memorandum

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**DATE:** February 22, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Megan Cortez, Disability Manager  
**SUBJECT:** RETIREE REQUEST TO BE REINSTATED – MARY ANN JOHNSON

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### Recommendation:

Reinstate Ms. Johnson as an active member under the provisions of Government Code Section 31680.4 and 31680.5.

### Background:

Application for re-employment of retired member

Attorney III, Orange County Public Defender's Office

Date of request: 02/08/2022

Date of entry to OCERS: 01/05/1996

Years of OCERS service: 18.05326

Separation date: 03/06/2014

Date of Service Retirement: 03/07/2014

Former position: Attorney III, Orange County Public Defender's Office

### Discussion:

Ms. Johnson service retired from Orange County Public Defender's Office on March 7, 2014. She has requested to be reinstated as an active employee under the provisions of Government Code Sections 31680.4 and 31680.5.

Ms. Johnson was an Attorney III prior to her separation from Orange County Public Defender's Office on March 6, 2014. Orange County's Public Defender's Office has offered Ms. Johnson regular full time employment as an Attorney III.

Pursuant to OCERS policy Ms. Johnson underwent a physical examination on February 16, 2022 with an independent OCERS panel physician to determine whether she was physically capable of returning to full time employment. It is the panel physician's opinion that Ms. Johnson can return to work without restriction.

**Submitted by:**

MC-Approved

Megan Cortez  
Disability Manager





## Memorandum

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**DATE:** February 22, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Suzanne Jenike, Assistant CEO, External Operations  
**SUBJECT:** 2022 COST OF LIVING ADJUSTMENT

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### Recommendation

Adjust all applicable benefit allowances by 3% effective April 1, 2022, and bank 1%, in accordance with Government Code section 31870.1, resulting from the 3.83% change to CPI in calendar year 2021 (rounded to 4%).

### Background/Discussion

Per Government Code section 31870.1, the OCERS Board of Retirement is required to annually adjust the benefit allowances relative to the increase or decrease in the Consumer Price Index (CPI). This adjustment, known as a Cost of Living Adjustment (COLA), is effective April 1<sup>st</sup> of each year. This year, there was an increase in the CPI for year-end 2021 of 3.83%. To determine the change in CPI, Segal compares the Bureau of Labor Statistics' annual average CPI for All Urban Consumers for the Los Angeles-Long Beach-Anaheim area for each of the past two years and derives the percentage change between the two. This is done in accordance with Government Code section 31870.1, which is the COLA section operative in Orange County. That section also states that any increase or decrease in the CPI is to be rounded to the nearest one-half of one percent (3.83% rounded to 4%) and provides that a maximum COLA of 3% shall be granted on every retirement allowance, optional death allowance, or annual death allowance payable to or on account of any member of the system. For years in which the COLA exceeds 3%, the amount over 3% is banked for future years when the COLA is less than 3%.

For all benefit recipients, who began or will begin receiving benefits on or before April 1, 2022, this adjustment will increase their allowances by 3% with the remaining 1% added to the COLA Bank.

### Submitted by:



S. J. – APPROVED

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Suzanne Jenike  
 Assistant CEO, External Operations

**§31870.1. Determination; maximum annual change of three percent in allowances; limitation on reduction**

The board shall before April 1 of each year determine whether there has been an increase or decrease in the cost of living as provided in this section. Notwithstanding Section 31481 or any other provision of this chapter (commencing with Section 31450), every retirement allowance, optional death allowance, or annual death allowance payable to or on account of any member, of this system or superseded system who retires or dies or who has retired or died shall, as of April 1st of each year, be increased or decreased by a percentage of the total allowance then being received found by the board to approximate to the nearest one-half of 1 percent, the percentage of annual increase or decrease in the cost of living as of January 1st of each year as shown by the then current Bureau of Labor Statistics Consumer Price Index for All Urban Consumers for the area in which the county seat is situated, but such change shall not exceed 3 percent per year; however, the amount of any cost-of-living increase or decrease in any year which is not met by the maximum annual change of 3 percent in allowances shall be accumulated to be met by increases or decreases in allowance in future years; except that no decrease shall reduce the allowance below the amount being received by the member or his beneficiary on the effective date of the allowance or the application of this article, whichever is later.

(Amended by Stats. 1978, Ch. 900, Sec. 11)



Andy Yeung, ASA, MAAA, FCA, EA  
Vice President & Actuary  
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ayeung@segalco.com

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Suite 1100  
San Francisco, CA 94105-6147  
segalco.com

**Via Email**

January 19, 2022

Mr. Steve Delaney  
Chief Executive Officer  
Orange County Employees Retirement System  
2223 Wellington Avenue  
Santa Ana, CA 92701-3101

**Re: Orange County Employees Retirement System  
Cost-of-Living Adjustments (COLA) as of April 1, 2022**

Dear Steve:

We have determined the cost-of-living adjustments for the System in accordance with Section 31870.1, as provided in the enclosed exhibit.

Pursuant to Section 31870.1, the cost-of-living factor to be used by the System on April 1, 2022 is determined by comparing the annual average CPI for All Urban Consumers for the Los Angeles-Long Beach-Anaheim Area (with 1982-84 as the base period), as published by the Bureau of Labor Statistics, in each of the past two years. The ratio of the past two annual indices, 289.244 in 2021 and 278.567 in 2020, is 1.0383. The County Law section cited above indicates that the resulting percentage change of 3.83% should be rounded to the nearest one-half percent, which is 4.0%.

Please note the above cost-of-living adjustment calculated using established procedures for OCERS may result in adjustments different from those calculated using alternative procedures by other systems.

The actual cost-of-living adjustment is independent of the date of retirement. The CPI adjustment to be applied on April 1, 2022 is provided in Column (4) of the enclosed exhibit. The COLA bank on April 1, 2022 is provided in Column (5).

Please give us a call if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Andy Yeung".

Andy Yeung, ASA, MAAA, FCA, EA  
Vice President & Actuary

bts/bbf  
Enclosure

cc: Suzanne Jenike                      Brenda M. Shott, CPA

Orange County Employees Retirement System Cost-Of-Living Adjustment As of April 1, 2022					
	(1)	(2)	(3)	(4)	(5)
Retirement Date	April 1, 2021 Accumulated Carry-over Bank	2022 CPI Change*	2022 CPI Rounded**	2022 CPI Used***	April 1, 2022 Accumulated Carry-over Bank****
All Members Section 31870.1 Maximum Annual COLA	3.0%				
On or Before 4/1/1972	46.5%	3.83%	4.0%	3.0%	47.5%
04/02/1972 to 04/01/1974	46.0%	3.83%	4.0%	3.0%	47.0%
04/02/1974 to 04/01/1975	45.5%	3.83%	4.0%	3.0%	46.5%
04/02/1975 to 04/01/1976	40.0%	3.83%	4.0%	3.0%	41.0%
04/02/1976 to 04/01/1977	34.5%	3.83%	4.0%	3.0%	35.5%
04/02/1977 to 04/01/1978	31.0%	3.83%	4.0%	3.0%	32.0%
04/02/1978 to 04/01/1979	27.0%	3.83%	4.0%	3.0%	28.0%
04/02/1979 to 04/01/1980	22.0%	3.83%	4.0%	3.0%	23.0%
04/02/1980 to 04/01/1981	14.5%	3.83%	4.0%	3.0%	15.5%
04/02/1981 to 04/01/1982	4.0%	3.83%	4.0%	3.0%	5.0%
04/02/1982 to 04/01/2021	0.0%	3.83%	4.0%	3.0%	1.0%
04/02/2021 to 04/01/2022		3.83%	4.0%	3.0%	1.0%

\* Based on ratio of 2021 annual average CPI to 2020 annual average CPI for the Los Angeles - Long Beach - Anaheim Area.

\*\* Based on CPI change rounded to nearest one-half percent.

\*\*\* These are the cost-of-living adjustment factors to be applied on April 1, 2022.

\*\*\*\* These are the carry-over of the cost-of-living adjustments that have not been used on April 1, 2022.

# Orange County Employees Retirement System

**Adoption of April 1, 2022 Cost-of-Living-Adjustment (COLA)**

**Meeting on February 22, 2022**

**Paul Angelo, Andy Yeung and Todd Tauzer**



# | Agenda

**Granting of April 1, 2022 COLA**

**Consumer Price Index (CPI) used by OCERS to determine COLA**

**Alternative measure of CPI used by some other 1937 Act systems**

**December-to-December versus annual-to-annual changes in CPI**

# Granting of April 1, 2022 COLA

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- Segal recommends April 1, 2022 COLA for review and adoption by the Board
  - For April 1, 2022, Segal recommends 3% COLA for all members
    - Maximum based on OCERS' plan provision adopted by the employers
  - Actual change in average Consumer Price Index (CPI) from 2020 to 2021 was 3.83%
    - Based on Los Angeles-Long Beach-Anaheim Area CPI (“area in which County seat is situated”)
  - Change in CPI is rounded to the nearest ½% or 4.00%
  - Difference between 4.00% and maximum 3% allowed is banked
    - Use in subsequent years when change in CPI falls below 3%



# CPI used by OCERS to determine COLA

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- OCERS bases COLAs on change in average CPI from calendar year 2020 to calendar year 2021
  - This method is called “annual-to-annual”
  - Based on change in “Annual” CPI published by Bureau Labor Statistics
    - Annual CPI is average of 12 monthly CPI values
    - 278.567 for 2020
    - 289.244 for 2021
    - Increase from 2020 to 2021 is 3.83%





## Alternative measure of CPI used by other 1937 Act systems

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- Some other systems use Los Angeles-Long Beach-Anaheim Area CPI change from December 2020 to December 2021
  - Based on change in monthly CPI as published by Bureau Labor Statistics
    - 279.560 for December 2020
    - 297.925 for December 2021
    - Increase from Dec. 2020 to Dec. 2021 is 6.57%

*Note that one system, San Bernardino CERA, uses Riverside-San Bernardino-Ontario Area CPI change from November 2020 to November 2021, which is higher than Los Angeles-Long Beach-Anaheim Area CPI change from December 2020 to December 2021*

- December-to-December change is expected to be more volatile compared to annual-to-annual change
  - Annual-to-annual change might be viewed as more reflective of actual purchasing power during the year
  - In the long run, the two measures are expected to average out to the same level of cumulative inflation

# December-to-December vs Annual-to-Annual Changes in CPI (higher values are in **bold**)

Year	LA-LB-Anaheim	
	Dec-to-Dec	Annual
2000	<b>3.71%</b>	3.31%
2001	2.07%	<b>3.32%</b>
2002	<b>3.73%</b>	2.76%
2003	1.80%	<b>2.63%</b>
2004	<b>4.39%</b>	3.32%
2005	<b>4.46%</b>	4.45%
2006	3.29%	<b>4.26%</b>
2007	<b>4.17%</b>	3.30%
2008	0.11%	<b>3.53%</b>
2009	<b>1.83%</b>	-0.80%
2010	<b>1.34%</b>	1.20%

Year	LA-LB-Anaheim	
	Dec-to-Dec	Annual
2011	2.17%	<b>2.67%</b>
2012	1.93%	<b>2.04%</b>
2013	<b>1.14%</b>	1.08%
2014	0.73%	<b>1.35%</b>
2015	<b>2.03%</b>	0.91%
2016	<b>1.97%</b>	1.89%
2017	<b>3.61%</b>	2.79%
2018	3.24%	<b>3.81%</b>
2019	2.96%	<b>3.07%</b>
2020	1.45%	<b>1.62%</b>
2021	<b>6.57%</b>	3.83%

## Geometric Avg to 2021

Geometric Avg 20-YR	<b>2.63%</b>	2.48%
Geometric Avg 15-YR	<b>2.34%</b>	2.14%
Geometric Avg 10-YR	<b>2.55%</b>	2.23%
Geometric Avg 5-YR	<b>3.55%</b>	3.02%

## Geometric Avg to 2020

Geometric Avg 20-YR	2.41%	<b>2.45%</b>
Geometric Avg 15-YR	2.13%	<b>2.17%</b>
Geometric Avg 10-YR	<b>2.12%</b>	<b>2.12%</b>
Geometric Avg 5-YR	<b>2.64%</b>	2.63%

- Dec-to-Dec change for 2021 is an outlier
- If we exclude 2021, Dec-to-Dec and annual-to-annual CPI changes are comparable over the last 5-year, 10-year, 15-year and 20-year periods

# Questions?





## Memorandum

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**DATE:** February 22, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Gina M. Ratto, General Counsel  
**SUBJECT:** **SACRS BOARD OF DIRECTORS ELECTIONS 2022-2023**

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### Recommendation

Identify one or more nominees for the SACRS Board of Directors election to be conducted on May 13, 2022; and direct staff to submit the nomination(s) to the SACRS Nominating Committee on or before March 1, 2022.

### Background/Discussion

At the May 13, 2022 SACRS business meeting, SACRS will conduct the election for the SACRS Board of Directors for 2022-2023. The Board of Directors consists of the following positions:

- President
- Vice President
- Treasurer
- Secretary
- Two (2) Regular Members
- Immediate Past President

Attached is the timeline for the upcoming election.

As a regular member of SACRS, OCERS may submit nominations for the election of the SACRS Directors. Such nominations are to be submitted to the SACRS Nominating Committee, and must be received by the Nominating Committee prior to the first business day after March 1 of each calendar year.

The purpose of this agenda item is for the Board to discuss and identify one or more nominees for the SACRS Board of Directors election to be conducted on May 13, 2022, and to direct staff to submit the nomination(s) to the SACRS Nominating Committee on or before March 1.

***In addition***, individuals interested in serving on the SACRS Board of Directors may indicate their interest by completing and submitting the attached SACRS Nomination Submission Form, with a letter of intent. The form and the letter of intent must be submitted to the Nominating Committee no later than March 1, 2022.

Prior to March 25, the Nominating Committee will report a final ballot to each regular member County Retirement System. Staff will present the final ballot to the OCERS Board at its April 18, 2022 meeting so that the Board can give direction to the OCERS Voting Delegate on how to vote OCERS' proxy in the SACRS election.

Attachments

- (1) SACRS Board of Directors Election 2022-2023 Information and Timeline
- (2) SACRS Nomination Submission Form

**Submitted by:**

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Gina M. Ratto  
General Counsel



January 1, 2022

To: SACRS Trustees & SACRS Administrators/CEO's  
 From: Dan McAllister, SACRS Immediate Past President, Nominating Committee Chair  
 SACRS Nominating Committee  
 Re: SACRS Board of Director Elections 2022-2023 - Elections Notice

SACRS BOD 2022-2023 election process will begin January 2022. Please provide this election notice to your Board of Trustees and Voting Delegates.

DEADLINE	DESCRIPTION
March 1, 2022	Any regular member may submit nominations for the election of a Director to the Nominating Committee, provided the Nominating Committee receives those nominations no later than noon on March 1 of each calendar year regardless of whether March 1 is a Business Day. Each candidate may run for only one office. Write-in candidates for the final ballot, and nominations from the floor on the day of the election, shall not be accepted.
March 25, 2022	The Nominating Committee will report a final ballot to each regular member County Retirement System prior to March 25
May 13, 2022	Nomination Committee to conduct elections during the SACRS Business Meeting at the Spring Conference
May 13, 2022	Board of Directors take office for 1 year

**Per SACRS Bylaws, Article VIII, Section 1. Board of Director and Section 2. Elections of Directors:**

**Section 1. Board of Directors. The Board shall consist of the officers of SACRS as described in Article VI, Section 1, the immediate Past President, and two (2) regular members**

**A. Immediate Past President.** *The immediate Past President, while he or she is a regular member of SACRS, shall also be a member of the Board. In the event the immediate Past President is unable to serve on the Board, the most recent Past President who qualifies shall serve as a member of the Board.*

**B. Two (2) Regular Members.** *Two (2) regular members shall also be members of the Board with full voting rights.*

**Section 2. Elections of Directors.** *Any regular member may submit nominations for the election of a Director to the Nominating Committee, provided the Nominating Committee receives those nominations no later than noon on March 1 of each calendar year regardless of whether March 1 is a Business Day. Each candidate may run for only one office. Write-in candidates for the final ballot, and nominations from the floor on the day of the election, shall not be accepted.*

*The Nominating Committee will report its suggested slate, along with a list of the names of all members who had been nominated, to each regular member County Retirement System prior to March 25.*





*The Administrator of each regular member County Retirement System shall be responsible for communicating the Nominating Committee's suggested slate to each trustee and placing the election of SACRS Directors on his or her board agenda. The Administrator shall acknowledge the completion of these responsibilities with the Nominating Committee.*

*Director elections shall take place during the first regular meeting of each calendar year. The election shall be conducted by an open roll call vote, and shall conform to Article V, Sections 6 and 7 of these Bylaws.*

*Newly elected Directors shall assume their duties at the conclusion of the meeting at which they are elected, with the exception of the office of Treasurer. The incumbent Treasurer shall co-serve with the newly elected Treasurer through the completion of the current fiscal year.*

The elections will be held at the SACRS Spring Conference May 10 – 13, 2022 at the Rancho Las Palmas, Rancho Mirage, CA. Elections will be held during the Annual Business meeting on Friday, May 13, 2022.

If you have any questions, please contact Dan McAllister, [Dan.McAllister@sdcounty.ca.gov](mailto:Dan.McAllister@sdcounty.ca.gov)

Thank you for your prompt attention to this timely matter.

Sincerely,

*Dan McAllister*

Dan McAllister, San Diego CERA Trustee & San Diego County Treasurer Tax Collector  
SACRS Nominating Committee Chair

CC: SACRS Board of Directors  
SACRS Nominating Committee Members  
Sulema H. Peterson, SACRS Executive Director



**SACRS Nomination Submission Form  
SACRS Board of Directors Elections 2022-2023**

All interested candidates must complete this form and submit along with a letter of intent. **Both the form and the letter of intent must be submitted no later than March 1, 2022.** Please submit to the Nominating Committee Chair at [Dan.McAllister@sdcounty.ca.gov](mailto:Dan.McAllister@sdcounty.ca.gov) AND to SACRS at [sulema@sacrs.org](mailto:sulema@sacrs.org). If you have any questions, please feel free to contact Sulema Peterson at SACRS at (916) 701-5158.

<b>Name of Candidate</b>	Name:
<b>Candidate Contact Information (Please include – Phone Number, Email Address and Mailing Address)</b>	Mailing Address:  Email Address:  Phone:
<b>Name of Retirement System Candidate Currently Serves On</b>	System Name:
<b>List Your Current Position on Retirement Board (Chair, Alternate, Retiree, General Elected, Etc)</b>	<input type="radio"/> Chair <input type="radio"/> Alternate <input type="radio"/> General Elected <input type="radio"/> Retiree <input type="radio"/> Other _____
<b>Applying for SACRS Board of Directors Position (select only one)</b>	<input type="radio"/> President <input type="radio"/> Vice President <input type="radio"/> Treasurer <input type="radio"/> Secretary <input type="radio"/> Regular Member
<b>Brief Bio</b>	





## Memorandum

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**DATE:** February 22, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Suzanne Jenike, Assistant Chief Executive Officer, External Operations  
**SUBJECT:** PERSONNEL COMMITTEE OUTCOMES FROM COMMITTEE MEETING HELD ON FEBRUARY 7, 2022

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### Recommendation

The Personnel Committee recommends the Board of Retirement approve the following items:

- 1) Approve the addition of two Extra Help positions, classified as a Member Services Manager and a Disability Manager in the External Operations division; and
- 2) Approve an amendment to OCERS' Administrative Budget for Fiscal Year 2022 by transferring \$25,000 from the Services and Supplies category to the Personnel category to account for budgeted costs for the Business Plan initiatives of a comprehensive review of the applicable MOUs for all OCERS Participating Employers being utilized using Extra Help positions instead of a third party consultant.

### Background/Discussion

#### Member Services

As part of the 2022 Business Plan goals and initiatives, we have an objective to create a comprehensive overview of the applicable Memorandum of Understandings (MOU) for all OCERS Employers. This initiative is associated with the GOAL to Achieve Excellence in the Service and Support We Provide our Members and Employers. To ensure OCERS is appropriately administering the benefits outlined in the Employers MOUs, a comprehensive overview is needed. This undertaking will also assist in our 100% Accuracy initiative and will be instrumental for documentation and future automation initiatives. We included the cost for this initiative in the Administrative Budget for Fiscal Year 2022 and categorized it under Services and Supplies with the thought that the project would be completed by a third party consultant. Upon further review, we believe utilizing an Extra Help position would be the best course of action and request that the dollars are transferred to the personnel category within the budget. This budget amendment does not result in an increase to the overall budget.

#### Disability

With the recent retirement of one of OCERS Disability Investigators, it is a good time to examine the disability retirement processes and procedures with a fresh set of eyes to ensure we that are efficient and effective. While we have a vacant position, we want to make sure that we have fully evaluated the staffing needs of the department and take advantage of any personnel changes that may be appropriate while we have a vacant position.

The County of Orange Human Resources Services Policy defines Extra Help as follows:

**Extra Help Position-** *Extra Help Position is a position intended to be occupied on less than a year-round basis including, but not limited to, the following: to cover seasonal peak workloads; extra emergency workloads of limited duration; or necessary vacation relief, paid sick leave and other situations involving a fluctuating staff. Ordinarily, a full-time extra help position will not be authorized for a period exceeding six (6) months. In unusual circumstances, and at the discretion of the Chief Executive Officer, a full-time extra help position may be authorized for a period longer than six (6) months, provided such period shall not exceed one (1) year.*

The extra help positions will be filled immediately. One individual is an OCERS retiree who was an Administrative Manager in the OC Human Resources department. She has extensive experience reviewing and interpreting MOUs and understands the coordination that takes place between the employers and OCERS. The second individual is the former Disability Manager for San Diego County Employees Retirement Association. She is knowledgeable of the disability retirement process and has extensive experience administering disability benefits in accordance with CERL. Both of the positions will be for a limited term and will be eliminated once the projects have been completed. The expectation is that both projects will be completed within 4-6 months.

**Submitted by:**



**SJ - Approved**

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Suzanne Jenike  
Assistant Chief Executive Officer  
External Operations



## Memorandum

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**DATE:** February 7, 2022  
**TO:** Steve Delaney, Chief Executive Officer  
**FROM:** Suzanne Jenike, Assistant CEO, External Operations  
**SUBJECT:** **JUSTIFICATION FOR ADDITION OF EXTRA HELP POSITIONS IN EXTERNAL OPERATIONS AND BUDGET AMENDMENT**

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### Recommendation

1. Add two (2) Extra Help positions, to be classified as a Member Services Manager and a Disability Manager, in the External Operations division; and
2. Approve an amendment to OCERS' Administrative Budget for Fiscal Year 2022 by transferring \$25,000 from the Services and Supplies category to the Personnel category to account for budgeted costs for the Business Plan initiatives of a comprehensive review of the applicable MOUs for all OCERS Participating Employers being utilized using Extra Help positions instead of a third party consultant.

### Background/Discussion

#### Member Services

As you know we administer retirement benefits for employers who have many Memorandums of Understanding (MOU). These MOUs often contain complicated rules for items of pay that may be pensionable. Items such as annual leave, vacation/sick leave, and holiday pay. In order to ensure our members receive excellent service and that our benefit payments are 100% accurate we need a comprehensive overview of all of the employer's MOUs. This project will also give us an opportunity to reexamine our procedures to see if there are opportunities for automation and/or improvement. We included the cost for this initiative in the Administrative Budget for Fiscal Year 2022 and categorized it under Services and Supplies with the thought that the project would be completed by a third party consultant. Upon further review, we believe utilizing an Extra Help position would be the best course of action and request that the dollars are transferred to the personnel category within the budget. This budget amendment does not result in an increase to the overall budget.

#### Disability

Rather than immediately replace the Disability Retirement Investigator who recently retired I think it would be beneficial to have an external partner examine OCERS disability processes to see if there are areas where we might improve or become more efficient. This is the opportune time given the vacancy and I think it would be helpful as we head into a new world of hybrid work schedules, AI automation, and the evolving needs of not just our

workforce but the members we serve. This evaluation will also help us determine the long-term staffing needs of this department.

Thank you in advance for your consideration.

**Submitted by:**



SJ-Approved

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Suzanne Jenike  
Assistant CEO, External Operations



## Memorandum

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**DATE:** February 7, 2022  
**TO:** County of Orange, Human Resources Services Department  
**FROM:** Steve Delaney, Chief Executive Officer  
**SUBJECT: REQUEST TO CREATE EXTRA HELP POSITIONS**

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On February 22, 2022, the OCERS' Board of Retirement approved the creation of two (2) Extra Help positions in the OCERS External Operations division, and authorized me to send this memo to you. The Extra Help positions will be used to assist the Member Services and Disability Departments for two limited term projects. The Member Services extra help position will be tasked with creating a comprehensive overview of all OCERS participating employers Memorandum of Understanding (MOU). The extra help position assigned to the Disability unit will assist in processing disability retirement applications due to a recent vacancy and will help evaluate the long term needs of the department.

Due to the urgent nature of this request, we ask that you use this memo as authorization to create the positions. We will forward a copy of the Board meeting minutes as soon as they are formally approved by the Board on March 21, 2022. In the interim, we trust that this memo will serve to verify that the Board of Retirement approved the position.

Thank you in advance for your consideration. Please do not hesitate to contact me at (714) 558-6222 if you have any questions or concerns.

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Steve Delaney, Chief Executive Officer

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Frank Eley, OCERS Board Chair



# Extra Help Position Request Form

An Extra Help Position Request Form should be attached to all PSMT transactions when positions are being added, deleted or extended.

## PART I - Agency/Department

Reset Form

Print Form

Save Form

Department/Agency

ADD New Position ↓  Budgeted  Unbudgeted

DELETE Existing Position

EXTEND Existing Position

Type of Use:

Requested Effective Date

Expiration Date

Extension Date (if requested)

NOTE: Enter date in format of XX/XX/XX, OR click in the field, then click on the arrow button (that's on the right side of the field) to select a date from the calendar

Funding Source

(e.g., Federal, State, Gen/Non-Gen Fund, User Fees, etc.)

Pay Class Code

Title Code

Title Description

Budget Control

Unit

# of Position(s) Requested

# of Incumbent(s)

List affected position number(s) [If applicable]

DEPARTMENT AUTHORIZED SIGNATURE ◀ \_\_\_\_\_

DATE ◀ \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

## PART II - Department Human Resources Manager

Recommended  Not Recommended

DATE REVIEW COMPLETED ◀ \_\_\_\_\_

AUTHORIZED SIGNATURE ◀ \_\_\_\_\_

## Attachments

Please include an attachment with the following required information:

**ADD NEW POSITION** - Summary outlining the reason(s) for the position, long-term staffing plan and position duties.

Please see attached memo and supporting documentation.

**EXTEND EXISTING POSITION** - Summary outlining the reason(s) for the continued use of the position and the status of the



## Job Description

# Member Services Manager

<b>DEPARTMENT:</b>	Member Services	<b>REPORTS TO:</b>	Member Services Director
<b>TITLE CODE:</b>	8020MR	<b>DATE:</b>	12/30/11
<b>POSITION CODE:</b>	R105537	<b>ADMINISTRATIVE REVISION:</b>	7/17/2015

### Job Summary

Under general direction, provides support to the Member Services Director by managing work schedules, counseling employees, completing evaluations, developing staff, managing special projects and other duties as assigned.

### Distinguishing Characteristics

The Member Services Manager reports to the Member Services Director. OCERS management staff is expected to uphold the highest standards of accountability, plan sponsor focus and system efficiency. Responsible for supervising the activities of assigned professional and technical benefits staff.

### Performance Attributes

Include but are not limited to the following:

- ▶ Provides responsive, high quality service to retirement system members, representatives of outside agencies and members of the public by providing accurate, complete and up-to-date information in a courteous, efficient and timely manner.
- ▶ Ensures that the County Employees Retirement Law of 1937, Federal and State statutes and OCERS policies are followed in the administration of the benefit programs.
- ▶ Responsible for overall development, training, and evaluation of staff.
- ▶ Participates in hiring decisions, disciplinary actions, performance evaluations and other personnel activities.
- ▶ Manages the Member Services and Disability staff by planning, coordinating, prioritizing, and monitoring staff activities.
- ▶ Monitor staff work activities to ensure safe and efficient work practices, quality and accuracy.
- ▶ Develop schedules and methods for performing division assignments.
- ▶ Responsible for performing other specialized duties related to the overall management of the benefits division.

### Minimum Qualifications

Minimum qualifications required for entry into the classification



## Job Description

# Member Services Manager

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### *Education and/or Experience*

A bachelor's degree from an accredited college or university in public or business administration, accounting, or human resources management and a minimum of two years experience supervising staff.

**or**

Four years of experience at a technical level in a retirement, insurance, or government benefit program, or in a personnel system which involves retirement benefit experience; minimum of two years experience supervising staff.

### *Special Notes, Licenses or Requirements:*

- ▶ A valid California class C driver's license or the ability to arrange necessary and timely transportation for field travel.
- ▶ May be required to use a personal vehicle.
- ▶ A complete background investigation is required; a felony or misdemeanor conviction may be a disqualifying factor from employment.
- ▶ Highly Desirable: Paralegal certification, Worker's Compensation Claims Professional certification, and/or Certified Employee Benefits Specialist.

### *Knowledge/Skills/Abilities*

Sample of KSA's necessary to perform essential duties of the position

#### **KNOWLEDGE OF:**

- ▶ Extensive knowledge of the 1937 County Employees Retirement Law and current regulations and statutes as it relates to disability and service retirements, divorce and death benefits.
- ▶ County policies and procedures including Civil Service Rules, the Compensation Ordinance, hiring, purchasing, grievance and disciplinary procedures.
- ▶ Supervision and training principles, practices and techniques.
- ▶ Defined benefit retirement plans and other types of pension plans.
- ▶ Telephone, office, and online etiquette.
- ▶ Customer service objectives and strategies.
- ▶ Basic techniques for report writing.
- ▶ Methods and techniques of supervision, training and motivation.
- ▶ Methods and techniques for record keeping.
- ▶ Computer applications and hardware related to the performance of the essential functions of the job.





## Job Description

# Member Services Manager

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### ***SKILLS/ABILITY TO:***

- ▶ Establish and maintain professional relationships with retirement system members, Plan Sponsors, OCERS staff, officials and the public.
- ▶ Communicate effectively in English both orally and in writing with a variety of individuals representing diverse cultures and backgrounds.
- ▶ Maintain a professional demeanor in volatile situations which require a high degree of sensitivity, tact and diplomacy.
- ▶ Manage, coordinate, and plan the day-to-day operations of OCERS Member Services and Disability divisions.
- ▶ Understand and interpret laws, policies and ordinances.
- ▶ Calculate and prepare mathematical data relative to payroll, retirement benefits and reports.
- ▶ Supervise, train, coordinate and evaluate employees.
- ▶ Perform job functions independently and in an ethical and objective manner.
- ▶ Exercise appropriate judgment in answering questions and releasing information.
- ▶ Demonstrate strict confidentiality, professionalism, integrity and compliance with applicable laws and regulations at all times.
- ▶ Use standard office equipment such as: computer, printer, scanner, fax machine, photocopier and 10-key calculators.

### ***Physical, Mental and Environmental Conditions***

The following is a description of the physical and mental abilities that are customarily required to perform the essential job functions of this position.

#### ***Physical and Mental Demands***

- ▶ Speak and hear well enough to communicate in English clearly and understandably in person, over the telephone and in small groups.
- ▶ Manual dexterity sufficient to use hands, arms and shoulders repetitively to operate a telephone, keyboard, write and use a calculator.
- ▶ Mental stamina to interact professionally with members of the Board of Retirement, Plan Sponsors, peers and retirement system members.
- ▶ Vision sufficient to read fine print and a computer monitor.
- ▶ Independent body mobility, agility, and stamina to stand, walk, stoop, bend and twist, to access a standard office environment.
- ▶ Ability to sit for prolonged periods of time.
- ▶ Body strength sufficient to lift up to 15 pounds and carry files.



## Job Description Member Services Manager

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### *Environmental Conditions*

- ▶ The primary work place is in an office environment, working with standard office equipment.
- ▶ Peripheral office equipment generates to a quiet to moderate noise level.
- ▶ Operates in an environment that includes elected officials, non-elected officials, government agencies, community interest groups and the general public in the development and coordination of OCERS affairs.
- ▶ Out of area travel may be required to attend professional conferences and meetings.

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### **Acknowledgement**

By signing below, I acknowledge that I have reviewed and discussed the contents, requirements, and expectations included in this job description with my supervisor and a copy has been provided to me.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Supervisor Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Reviewer Signature

\_\_\_\_\_  
Date



## Job Description Disability Manager

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<b>DEPARTMENT:</b>	Disability	<b>REPORTS TO:</b>	Assistant CEO, External Operations
<b>TITLE CODE:</b>	8020MR	<b>DATE:</b>	1/11/2019
<b>POSITION CODE:</b>		<b>ADMINISTRATIVE REVISION:</b>	1/11/2019

### Job Summary

Under general direction, provides support to the Assistant CEO, External Operations by planning, organizing, directing and evaluating the work of the Disability Division.

### Distinguishing Characteristics

The Disability Manager reports directly to the Assistant CEO, External Operations. OCERS management staff is expected to uphold the highest standards of accountability, employer focus and system efficiency. The Disability Manager is responsible for supervising the activities of assigned professional and technical benefits staff.

### Performance Attributes

Include but are not limited to the following:

- ▶ Provides responsive, high quality service to retirement system members, representatives of outside agencies and members of the public by providing accurate, complete and up-to-date information in a courteous, efficient and timely manner.
- ▶ Ensures that the County Employees Retirement Law of 1937, Federal and State statutes and OCERS policies are followed in the administration of the disability and benefit programs.
- ▶ Responsible for overall development, training, and evaluation of staff.
- ▶ Participates in hiring decisions, disciplinary actions, performance evaluations and other personnel activities.
- ▶ Manages the Disability staff by planning, coordinating, prioritizing, and monitoring staff activities.
- ▶ Monitor staff work activities to ensure safe and efficient work practices, quality and accuracy.
- ▶ Develop schedules and methods for performing division assignments.
- ▶ Responsible for performing other specialized duties related to the overall management of the disability division.

### Minimum Qualifications

Minimum qualifications required for entry into the classification



## Job Description Disability Manager

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### *Education and/or Experience*

Graduation from an accredited university or college with a Bachelor's Degree in Public or Business Administration, Accounting or Human Resources Management or a related field and a minimum of two years' experience supervising staff.

**or**

Four years of experience at a technical level in a retirement, insurance, or government benefit program, or in a personnel system which involves retirement benefit experience; minimum of two years' experience supervising staff.

### *Special Notes, Licenses or Requirements:*

- ▶ A valid California class C driver's license or the ability to arrange necessary and timely transportation for field travel.
- ▶ May be required to use a personal vehicle.
- ▶ A complete background investigation is required; a felony or misdemeanor conviction may be a disqualifying factor from employment.
- ▶ **Highly Desirable:** Paralegal certification, Worker's Compensation Claims Professional certification, and/or Certified Employee Benefits Specialist (CEBS).

### *Knowledge/Skills/Abilities*

Sample of KSA's necessary to perform essential duties of the position

#### **KNOWLEDGE OF:**

- ▶ Extensive knowledge of the 1937 County Employees Retirement Law and current regulations and statutes as it relates to disability and service retirements, divorce and death benefits.
- ▶ County policies and procedures including, hiring, , grievance and disciplinary procedures.
- ▶ Supervision and training principles, practices and techniques.
- ▶ Defined benefit retirement plans and other types of pension plans.
- ▶ Telephone, office, and online etiquette.
- ▶ Customer service objectives and strategies.
- ▶ Basic techniques for report writing.
- ▶ Methods and techniques of supervision, training and motivation.
- ▶ Methods and techniques for record keeping.
- ▶ Computer applications and hardware related to the performance of the essential functions of the job.



## Job Description **Disability Manager**

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### ***SKILLS/ABILITY TO:***

- ▶ Establish and maintain professional relationships with retirement system members, Plan Sponsors, OCERS staff, officials and the public.
- ▶ Communicate effectively in English both orally and in writing with a variety of individuals representing diverse cultures and backgrounds.
- ▶ Maintain a professional demeanour in volatile situations; which require a high degree of sensitivity, tact and diplomacy.
- ▶ Manage, coordinate and plan the day-to-day operations of OCERS Disability division.
- ▶ Understand and interpret laws, policies and ordinances.
- ▶ Calculate and prepare statistical data and reports for the Board.
- ▶ Supervise, train, coordinate and evaluate employees.
- ▶ Perform job functions independently and in an ethical and objective manner.
- ▶ Exercise appropriate judgment in answering questions and releasing information.
- ▶ Demonstrate strict confidentiality, professionalism, integrity and compliance with applicable laws and regulations at all times.
- ▶ Use standard office equipment such as: computer, printer, scanner, fax machine, photocopier and 10-key calculators.

### ***Physical, Mental and Environmental Conditions***

The following is a description of the physical and mental abilities that are customarily required to perform the essential job functions of this position.

#### ***Physical and Mental Demands***

- ▶ Speak and hear well enough to communicate in English clearly and understandably in person, over the telephone and in small groups.
- ▶ Manual dexterity sufficient to use hands, arms and shoulders repetitively to operate a telephone, keyboard, write and use a calculator.
- ▶ Mental stamina to interact professionally with members of the Board of Retirement, Plan Sponsors, peers and retirement system members.
- ▶ Vision sufficient to read fine print and a computer monitor.
- ▶ Independent body mobility, agility, and stamina to stand, walk, stoop, bend and twist, to access a standard office environment.
- ▶ Ability to sit for prolonged periods of time.
- ▶ Body strength sufficient to lift up to 15 pounds and carry files.



## Job Description **Disability Manager**

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### *Environmental Conditions*

- ▶ The primary work place is in an office environment, working with standard office equipment.
- ▶ Peripheral office equipment generates to a quiet to moderate noise level.
- ▶ Operates in an environment that includes elected officials, non-elected officials, government agencies, community interest groups and the general public in the development and coordination of OCERS affairs.
- ▶ Out of area travel may be required to attend professional conferences and meetings.

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### **Acknowledgement**

By signing below, I acknowledge that I have reviewed and discussed the contents, requirements, and expectations included in this job description with my supervisor and a copy has been provided to me.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Supervisor Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Reviewer Signature

\_\_\_\_\_  
Date



## Memorandum

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**DATE:** February 22, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Steve Delaney, Chief Executive Officer  
**SUBJECT:** **2021 EMPLOYEE, MANAGER AND INNOVATOR OF THE YEAR**

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### Presentation

#### Background/Discussion

Each year OCERS opens nominations from the entire OCERS team to help choose our Employee of the Year, our Manager of the Year, and so important to an agency striving for continuous improvement, our Innovator of the Year.

On February 22 I will share our 2022 winners, as determined ultimately by the OCERS Senior Executive team.

For **EMPLOYEE OF THE YEAR**, Ms. Nusa Sio.

Some of the highlights from those nominating Ms. Sio:

- Nusa has consistently displayed a commitment to excellence and a positive attitude.
- Nusa is always willing to go above-and-beyond.
- She performs her work with accuracy and care, and she is a pleasure to work with.

For **MANAGER OF THE YEAR**, Ms. Laura Barker.

Some of the highlights from those nominating Ms. Barker:

- Laura volunteered to take the lead as the project manager for implementing OCERS new Enterprise Resource Planning software, a very large project, all while maintaining her day-to-day duties.
- She put in much thought and time in building a much more efficient and logical accounting structure for the chart of accounts, which is the basis for so many accounting reports.
- She was also extremely responsive to the consultant's constant requests for information and helped save IT many hours of work by figuring out a way to migrate data from the old system to the new system.
- We met our timeline of going live on January 1, 2022.
- Laura's goal was to help create an accounting system that will run efficiently and be used by others long after she is gone - she should be very proud of the new system that she helped to create and to help OCERS move forward with reaching Vision 2030!

For **INNOVATOR OF THE YEAR**, Ms. Jonathea Tallasse.

Some of the highlights from those nominating Ms. Tallasse:

- Jonathea has shown leadership and innovation in her role as a mentor for the NLL (Next Level Leadership) candidates. She developed training and guided all three of the candidates. Through remote work, she showed them how to deal with issues in real time.
- She worked tirelessly on the 100% Accuracy project, updating the tools that her team uses in order to break apart and organize data so pay items are easier to identify.
- She worked with other team members to brainstorm the development of a revised excel tool that would help catch FAS errors that were occurring. Once the ideas had been laid out, she quickly went to work utilizing her exceptional excel skills to develop this new tool along with updated procedures and training for the team.
- Once the Excel tool was implemented, she worked with a dedicated team of RPS volunteers as a part of a committee to review the results of the improved tool and determine other solutions to make it even better.
- She quickly developed a set of Macros for the Excel tool that helped cut down 10 to 30 minutes of processing and improved the accuracy of the team from a 6-8% quarterly error rate down to 1.5% for the last quarter of 2021.
- Member Services was also able to hit 0% errors for two separate months in the third and fourth quarter of 2021 because of the contributions of this Excel tool.

Our winners will be joining us on the February 22 Zoom call, so I can have the pleasure of introducing each of them to the OCES Board of Retirement.

Submitted by:



**SD - Approved**

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Steve Delaney  
Chief Executive Officer



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# **2021 Employee Staff Awards**

**February 22, 2022**



# Employee of the Year

## Nusa Sio





## Manager of the Year

**Laura Barker**





# Innovator Award Winner

## Jonathea Tallase





**Thank You!**



## Memorandum

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DATE: February 22, 2022  
TO: Members of the Board of Retirement  
FROM: Steve Delaney, Chief Executive Officer  
SUBJECT: **ACTUARIAL TOPICS WITH SEGAL**

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### Presentation

### Background

Informational only, on February 22, the Segal team will discuss a number of actuarial-related issues that have had questions posed in recent months.

Among the topics they will discuss:

- Determining COLA – OCERS process compared to other County Systems
- Mortality as impacted by COVID 19
- Current mortality expectations for Safety Members
- With excess returns, should OCERS consider early adjustment of the Assumed Earnings Rate

### Submitted by:



**SD - Approved**

Steve Delaney  
Chief Executive Officer



## Memorandum

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**DATE:** February 07, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Cynthia Hockless, Director of Human Resources  
**SUBJECT:** JANUARY STAFFING UPDATE

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OCERS Human Resources department started the year with a budgeted headcount of one-hundred and eight (108) positions. The 2022 Staffing Plan was approved at the November 15, 2021, Board meeting. The Board approved the addition of twelve (12) new positions moving the agency's budgeted headcount from 96 to 108. The twelve (12) new positions include two (2) management-level positions in the Information Technology department and a total of ten (10) positions in the Member Services department. The approved positions are as follow:

- Two (2) Information Technology Managers – Information Technology (Set to open in February)
- Two (2) Benefit Analysts – Member Services (On Hold)
- Two (2) Retirement Benefits Program Supervisors – Member Services (On Hold)
- **Four (4) Senior Retirement Program Specialists – Member Services (Open, will recruit at the Retirement Program Specialists level)**
- **Two (2) Retirement Program Specialists – Member Services (Open)**

OCERS has a total of ten (10) legacy vacancies:

- Sr. Manager of Operation Support Services – Operations Support Services (On Hold)
- **Investment Officer – Investments (Open)**
- Accountant/Auditor I – Finance (On Hold)
- Sr. Staff Development Specialist – Member Services (On Hold)
- Disability Investigator – Member Services (On Hold)
- **Two (2) Retirement Program Specialists – Member Services (Open)**
- (Extra Help) Retirement Program Specialist – Member Services (On Hold)
- **Executive Secretary I – Legal & External Operations (Pending final candidate selection, tentative start date is February 25, 2022)**
- Sr. Retirement Programmer/Business Analyst – Information Technology (Will open in February)

In January, the department filled the Director of Investment position with an internal candidate. This promotion created a vacancy in the department for an Investment Officer position. The department is recruiting for the Executive Secretary I position which will report to the General Counsel and Assistant CEO, of External Operations.

At the time of this report, a final candidate was selected and is tentatively scheduled to start on February 25, 2022.

Also, in January, OCERS had two (2) long-term employees retire which created additional vacancies. These positions are the Member Services Manager and the Disability Investigator. The Member Services Manager position was filled by an internal candidate. The Disability Investigator position remains vacant and is currently on hold. The duties of this position are currently being reviewed by the Member Services department.

The Human Resources department received approval from the CEO and Assistant CEO of Internal Operations to hire a temporary HR Assistant to help with the recruitment process. Interviews were conducted in January for a temporary employee. The temporary employee is scheduled to join the HR team in mid-February. This additional staffing assistance will help the department offset a heavier than usual workload.

In conclusion, OCERS has a headcount of 108 budgeted positions and a total of 86 team members on payroll. There are currently twenty-two (22) vacancies. At the time of this report, a total of two (2) team members have separated from the agency in January. The two separations were due to retirement. The year-to-date estimated annual turnover rate is 2.3%. The turnover rate is the number of separated employees divided by the number of employees on payroll multiple by 100.

**Attachments:**

1. 2022 Organization Chart
2. 2022 Staffing Activities Map

**Submitted by:**



**CH - Approved**

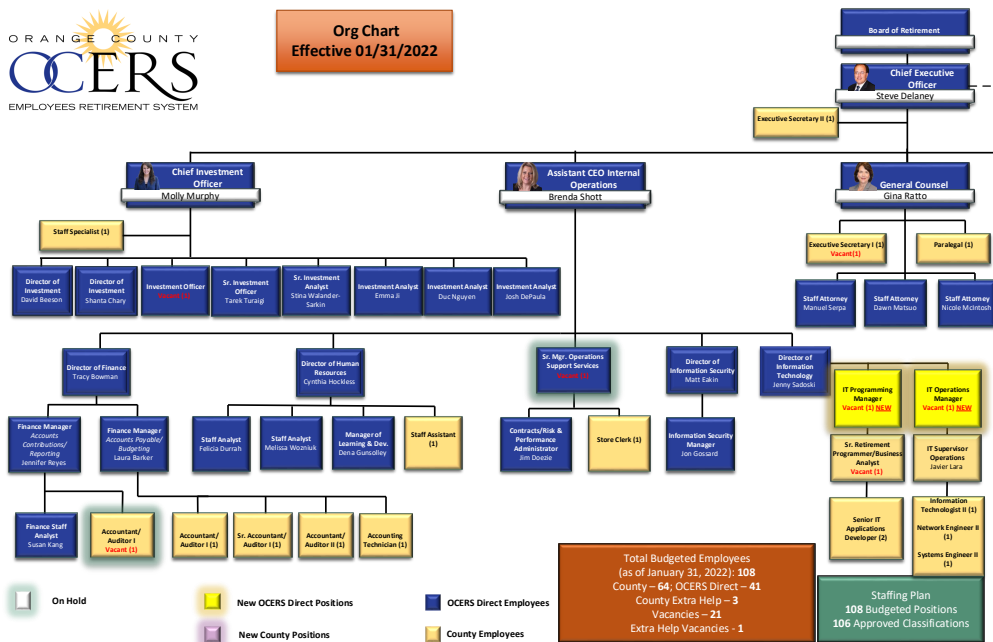
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Cynthia Hockless  
Director of Human Resources

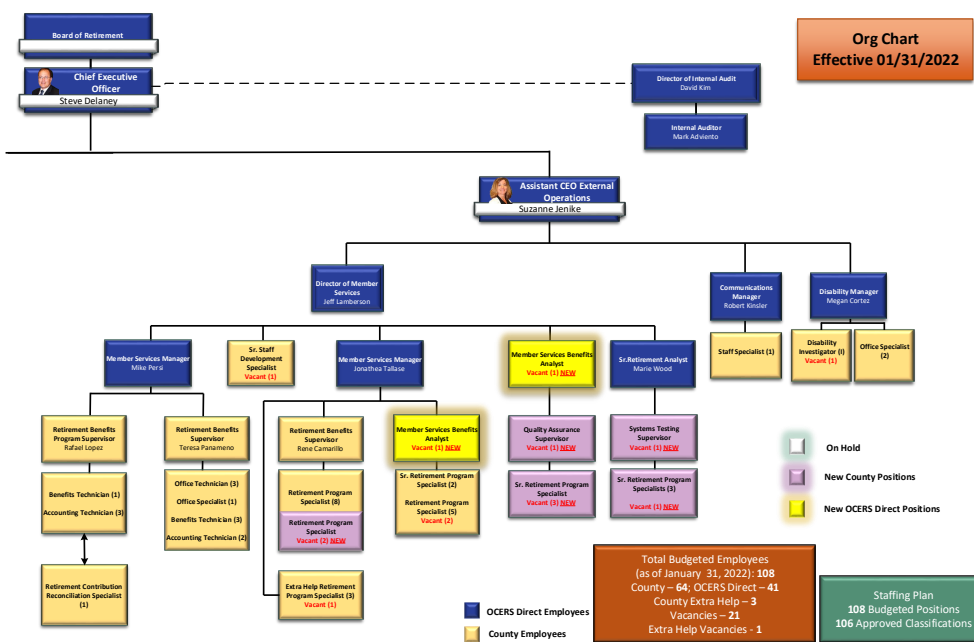




**Org Chart**  
Effective 01/31/2022

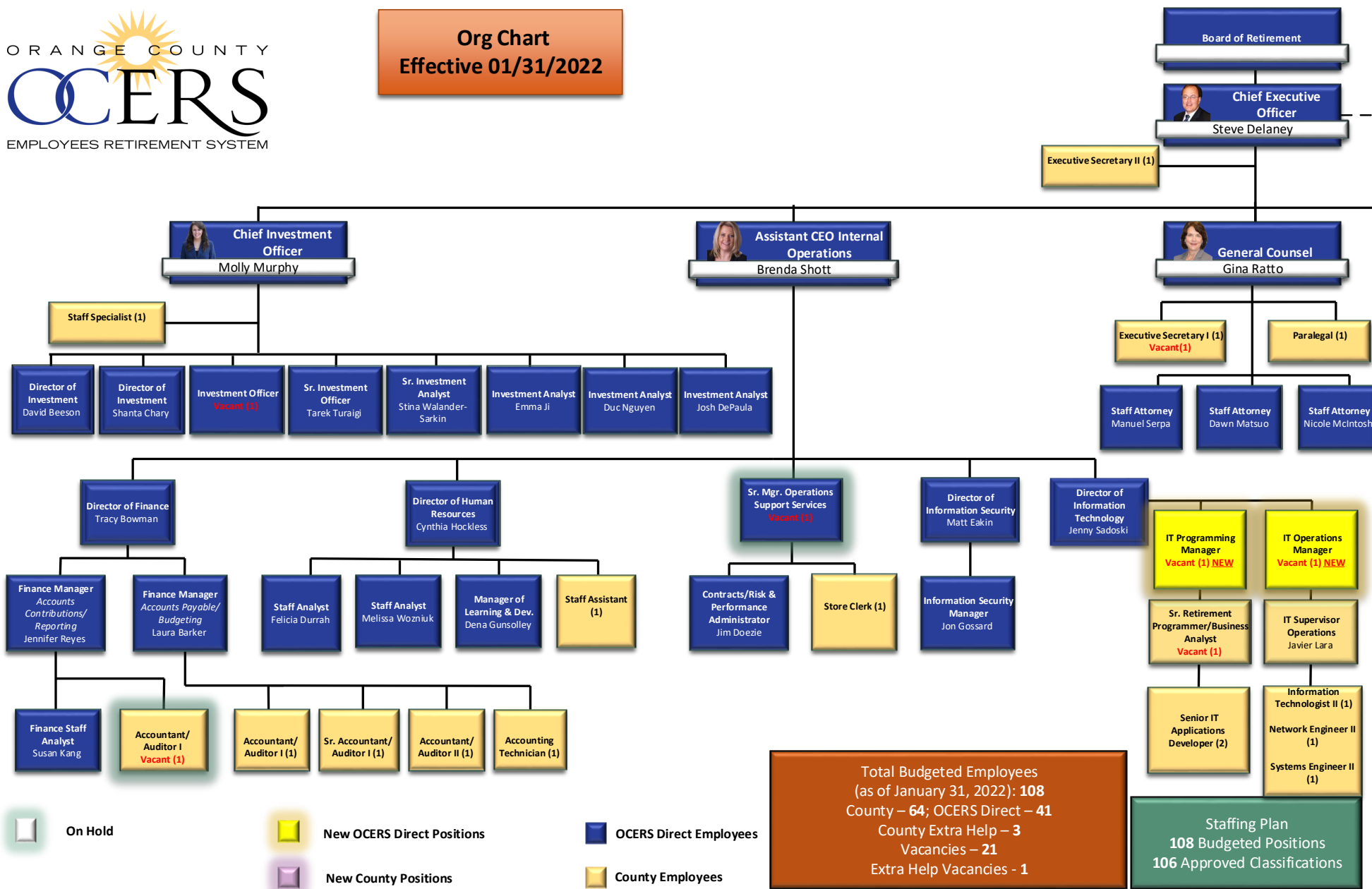


**Org Chart**  
Effective 01/31/2022

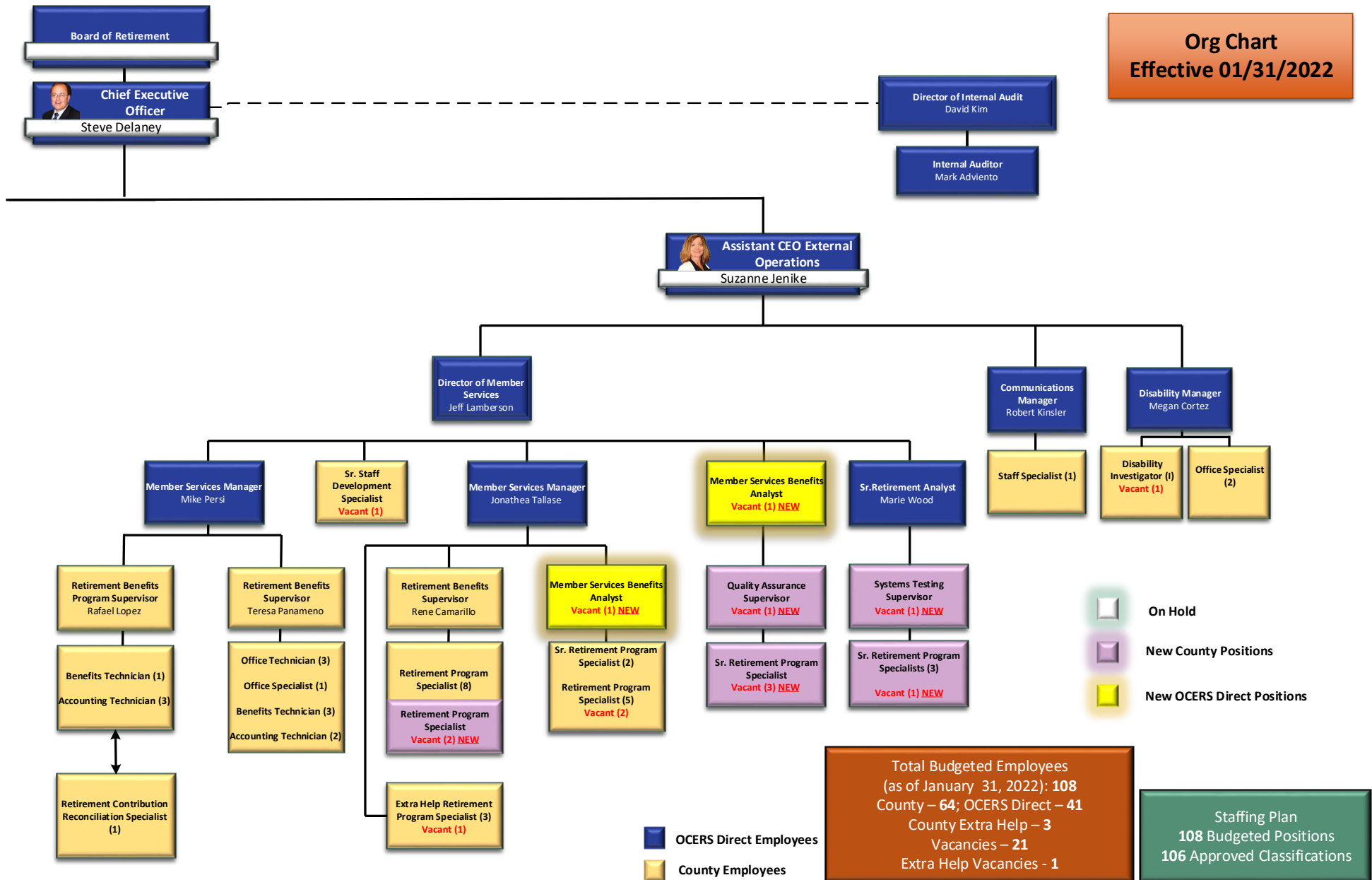




**Org Chart**  
Effective 01/31/2022

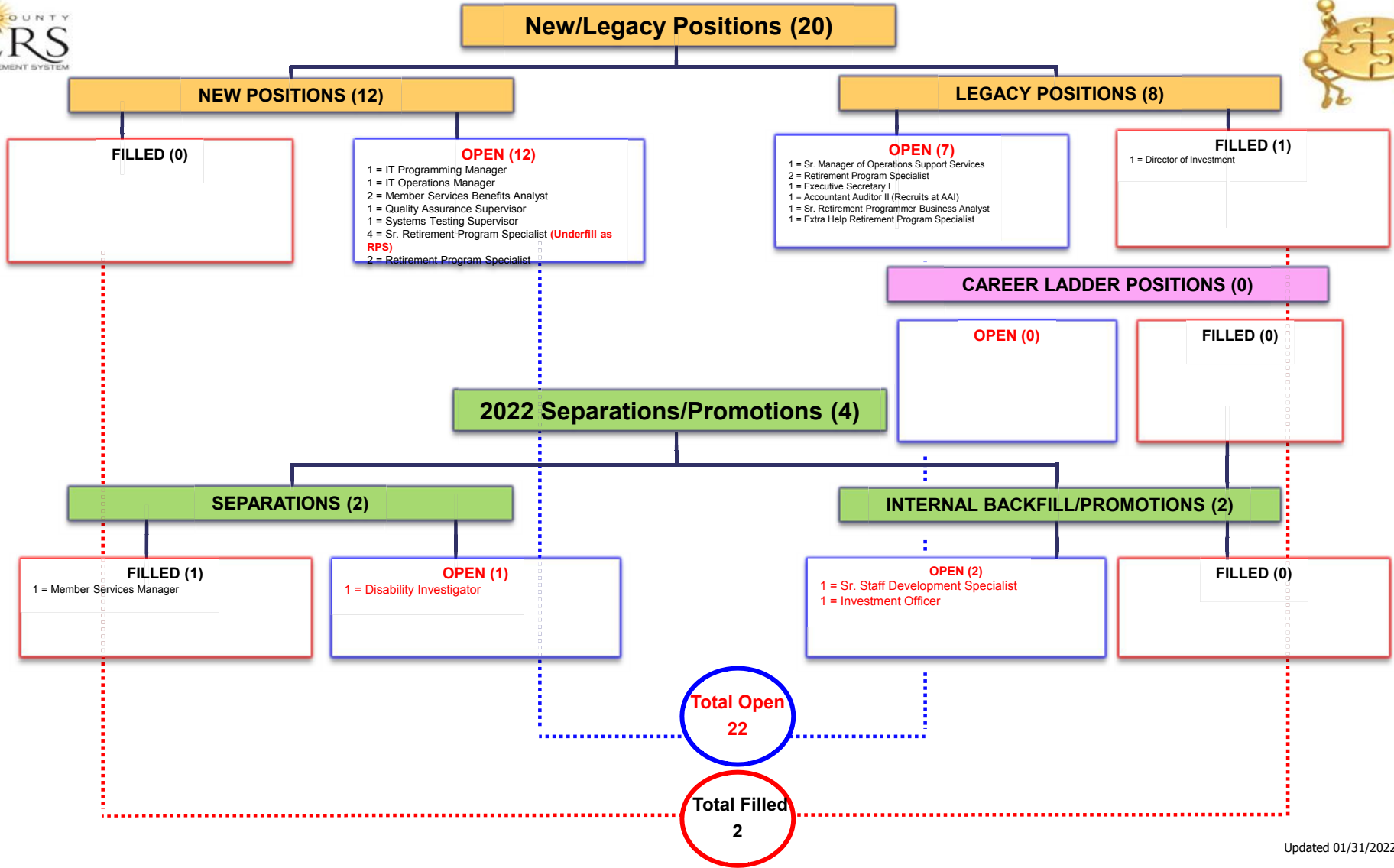


**Org Chart  
Effective 01/31/2022**





## 2022 Recruitment Activity



Updated 01/31/2022



## Memorandum

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**DATE:** February 9, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Matt Eakin, Director of Information Security  
**SUBJECT:** **MICROSOFT 365 MIGRATION IMPACT TO BOARD MEMBERS**

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### Presentation

#### Background/Discussion

OCERS is in the final phases of its migration for various Microsoft 365 (M365) services including Exchange (cloud email), OneDrive (cloud file storage), Intune (cloud device management), and Microsoft 365 Apps (cloud version of Microsoft Office). Board Member accounts, devices, and email will be migrated to M365 in this final phase.

For those of you with Surface tablets, due to OCERS migration to Microsoft 365 (M365), email functionality on your Surface tablet is expected to stop functioning during the weekend of 2/11 - 2/13. This will not be a major impact for most of you, as you either have your OCERS email forwarded to a personal email address (which will continue to function during the transition), or the OCERS team is already in the process of making other arrangements with those of you who currently access OCERS email directly from another device.

During the OCERS Board Meeting on Tuesday, February 22nd, we plan to provide you with further information about how OCERS transition to M365 will impact Board Member access to OCERS email. OCERS Legal department will also provide brief legal clarifications regarding Board Member use of personal email and/or personal devices for OCERS business. We will then provide a recommendation for how we can standardize mobile email access for all Board Members moving forward.

Shortly after the Board Meeting, we plan to migrate Board Members to our new M365 services, and we will need your Surface device to process the migration (it can be dropped off at the OCERS office or we can send a courier to pick it up). Once your Surface tablet has been migrated to M365, email functionality will be restored on the device. Additionally, OCERS IT will work with you to setup access to OCERS email on a mobile device per our recommendation in this presentation.

Submitted by:



**ME - Approved**

Matt Eakin  
Director of Information Security

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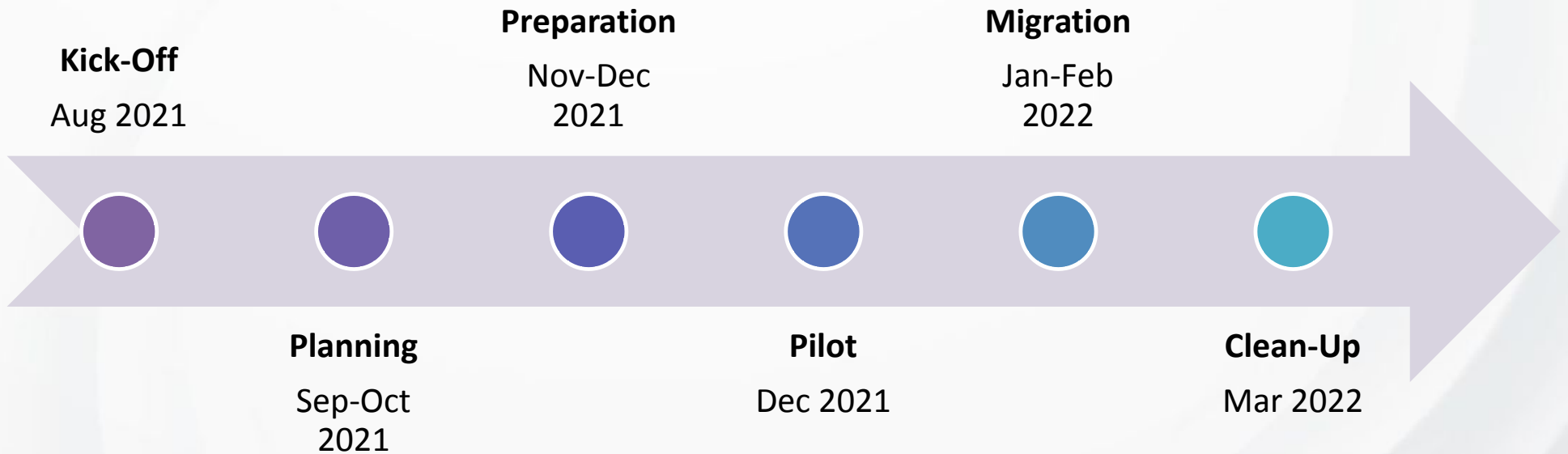


# **Microsoft 365 Migration Impact to Board Members**

**February 22, 2022**



# Microsoft 365 Implementation





## Expected Benefits

- Improved Communication
- Centralized Collaboration
- Additional Features
- Secure Cloud Storage
- Predictable Spend
- Business Continuity
- Automatic Upgrades





## Surface Tablets

- Surface Tablets (8 Board Members)
  - Email migration to M365 occurred 2/11-2/13
  - Email was expected to stop functioning on Surface tablets by 2/14
    - Email forwarded to personal/alternate address continued to function
    - Email access from mobile phone is an available option
  - IT needs physical access to Surface tablets to reconfigure for M365
    - Can drop off to IT, or IT can arrange for courier pickup/delivery



# Legal Clarifications

- Regarding Board Member Use of Personal Email / Personal Devices
  - Potential for a court to order inspection of a personal device during civil litigation
  - Production of records is subject matter-based, not source-based
    - OCERS / Board Members will have an obligation to perform a reasonably diligent search regardless of where the records might be stored
    - Even if all OCERS communications are moved away from using personal email and/or personal devices, OCERS / Board Members still have an obligation to perform a reasonably diligent search of personal email / devices regardless of where the records might be stored
    - This would include communications in any format, including but not limited to, hard copy documents, written notes, voice mails, text messages, emails, etc.



# Standardizing Mobile Email Access

- Board Member Mobile Email Access is Currently Fragmented
  - Some forward to personal/alternate email address
  - Some access OCERS email from personal/alternate phone
  - Some access OCERS email from Surface tablet only
- Our Goals
  - Have a defined policy
  - Standardize email access
  - Centralize email communications
  - Provide consistent security
  - Enable timely communications
- Our Recommendation
  - Stop email forwarding
  - Use Outlook Mobile for OCERS email
    - On your personal/alternate phone, or
    - On an OCERS-issued phone

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**Questions?**



## Memorandum

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DATE: February 22, 2022  
TO: Members of the Board of Retirement  
FROM: Steve Delaney, Chief Executive Officer  
SUBJECT: **COVID-19 UPDATE**

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### **Presentation**

The OCERS staff continues to do a great job meeting the COVID-19 challenge and ensuring that our members receive the services they expect as we fulfill this agency's mission. Rather than provide you with a written report of the agency status prior to the Tuesday, February 22<sup>nd</sup> meeting of the OCERS Board of Retirement, I will instead provide a verbal update of plan status and challenges at that time. This recognizes the fact that issues impacted by COVID-19 seem to change daily.

### Submitted by:



**SD - Approved**

Steve Delaney  
Chief Executive Officer

*Orange County Employees Retirement System  
Retirement Board Meeting  
February 22, 2022  
Application Notices*

<b>Member Name</b>	<b>Agency/Employer</b>	<b>Retirement Date</b>
<b>Almazan, Julia</b>	Superior Court	12/3/2021
<b>Amador, Edward</b>	Social Services Agency	12/17/2021
<b>Amezcuca, Elsa</b>	Health Care Agency	12/3/2021
<b>Beeney, Joshua</b>	Sheriff's Dept	12/3/2021
<b>Bird, Michael</b>	Social Services Agency	12/6/2021
<b>Brown, Loretta</b>	OC Public Works	12/17/2021
<b>Chang, Helena</b>	Child Support Services	12/3/2021
<b>Charette, Jennifer</b>	Social Services Agency	11/25/2021
<b>Chaudhry, Zafar</b>	Clerk of the Board	12/3/2021
<b>Clawson, Robin</b>	Health Care Agency	12/17/2021
<b>Contreras, Jose</b>	Social Services Agency	12/14/2021
<b>Daniels, Cameron</b>	Fire Authority (OCFA)	12/17/2021
<b>De Leon, Santa</b>	Social Services Agency	12/3/2021
<b>Deboer, Dane</b>	Sheriff's Dept	5/20/2021
<b>Del Rosario, Deanne</b>	Social Services Agency	12/17/2021
<b>Duque, Rosa</b>	Social Services Agency	12/3/2021
<b>Eaton, Jeffrey</b>	OC Public Works	12/17/2021
<b>Edwards, Gina</b>	Probation	11/29/2021
<b>Elzbeth, Natalie</b>	Sheriff's Dept	12/16/2021
<b>Falk, Gianfranco</b>	Superior Court	12/17/2021
<b>Flanagan, Thomas</b>	Sanitation District	12/12/2021
<b>Ganz, Lisa</b>	Transportation Corridor Agency	11/7/2021
<b>Gibson, William</b>	Sheriff's Dept	12/17/2021
<b>Granado, Joaquin</b>	Health Care Agency	12/3/2021
<b>Harris, Beryl</b>	Probation	12/3/2021
<b>Larios, Anthony</b>	Sheriff's Dept	12/17/2021
<b>Lopez, Jesus</b>	Cemetery District	12/3/2021
<b>Mandell, Janet</b>	OC Community Resources	12/12/2021
<b>Mauga, Joseph</b>	Sheriff's Dept	12/17/2021
<b>Mchenry, Michael</b>	Sheriff's Dept	10/29/2021
<b>Mercadefe, Janet</b>	Superior Court	1/8/2022
<b>Mills, Lorraine</b>	OCTA	12/11/2021
<b>Montano, Steven</b>	City of San Juan Capistrano	12/4/2021
<b>Nguyen, Kim-Don</b>	Social Services Agency	12/3/2021
<b>Nguyen, Tuan</b>	Registrar of Voters	12/6/2021
<b>Palmer, Lisa</b>	Superior Court	12/3/2021
<b>Perez, Gloria</b>	OC Community Resources	12/3/2021
<b>Phoenix, Brad</b>	Fire Authority (OCFA)	12/9/2021
<b>Pinck, James</b>	Probation	12/3/2021
<b>Popp, John</b>	Sheriff's Dept	12/3/2021
<b>Ramsey, Maryam</b>	City of San Juan Capistrano	12/9/2021
<b>Reid, Mary</b>	OC Public Works	9/25/2021
<b>Reilly, Kevin</b>	Health Care Agency	12/2/2021
<b>Rivas, Pedro</b>	Sheriff's Dept	12/17/2021
<b>Robles, Manaen</b>	Sheriff's Dept	12/3/2021
<b>Rollins, Geoffrey</b>	Sheriff's Dept	12/3/2021
<b>Sanchez, Richard</b>	Health Care Agency	11/8/2021
<b>Shaw, Eric</b>	Sheriff's Dept	12/3/2021
<b>Streger, Steven</b>	Superior Court	12/2/2021

<b><i>Member Name</i></b>	<b><i>Agency/Employer</i></b>	<b><i>Retirement Date</i></b>
<b>Terrones-Granado, Dixie</b>	Health Care Agency	12/3/2021
<b>Tilbury, Lauren</b>	Superior Court	12/3/2021
<b>Tran, Caroline</b>	Social Services Agency	12/1/2021
<b>Trimmer, James</b>	Health Care Agency	12/3/2021
<b>Whitehurst, Daniel</b>	Social Services Agency	11/5/2021
<b>Yamamoto, Patricia</b>	Health Care Agency	11/3/2021
<b>Zamaitat, Sylvia</b>	Sheriff's Dept	12/17/2021

***Orange County Employees Retirement  
Retirement Board Meeting  
February 22, 2022  
Death Notices***

<b><i>Active Members</i></b>	<b><i>Agency/Employer</i></b>
Ernby, Kelly	District Attorney
Hguyen, Haiyen	Public Defender
Johnson, Jason	John Wayne Airport

<b><i>Retired Members</i></b>	<b><i>Agency/Employer</i></b>
Baumgartner, Robert	Sheriff's Dept
Bender, Nell	OC Public Works
Blount, Judith	Social Services Agency
Brown, Loretta	OC Community Resources
Burton, Joan	Social Services Agency
Connor, Jack	OCTA
Dahl, James	Fire Authority (OCFA)
Davis, Clyde	OC Public Works
Desatoff, Jean	Sheriff's Dept
Dwyer, Thaddeus	Sheriff's Dept
Esslinger, Mary	Assessor
Feierabend, Diane	Social Services Agency
Hall, Judith	Superior Court
Hay, Patricia	OC Public Works
Hollis, Charles	Sheriff's Dept
Idris, Mahmood	OC Public Works
Klika, Cynthia	Social Services Agency
Lewis, James	OCTA
Long, Gloria	Health Care Agency
Luster, Marianne	District Attorney
Marcum, Richard	OC Public Works
Martin, Sue	Sheriff's Dept
Meza, Manuel	Social Services Agency
Mondello, Albert	OCTA
Morones, Gertrude	Superior Court
Moskowitz, Elaine	Auditor Controller
Natsuhara, Joe	OC Public Works
Neely, Keith	Health Care Agency
Nguyen, Kathy	Social Services Agency
Orate, Escolastica	UCI
Sanchez, Maria	Social Services Agency
Shaddix, Clarence	OC Public Works
Silva, Ralph	District Attorney
Sylvester, Le Lonnie	Sheriff's Dept
Tardif, Elmer	Fire Authority (OCFA)
Thomassen, Arthur	Probation



Truett, William	OCTA
Wade, Wallace	Child Support Services
Willis, Sandra	Health Care Agency

<i><b>Surviving Spouses</b></i>	
Brakke, Eugene	
Cisneros, Gloria	
Cruce, Richard	
Daniels, Hamesdouhie	
Genovese, Eugene	
Kammel, Dora	
Poe, Robert	
Prater, Mary	
Strahan, Leon	
Williams, Virginia	

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM  
2223 E. WELLINGTON AVENUE, SUITE 100  
SANTA ANA, CALIFORNIA**

**AUDIT COMMITTEE MEETING  
December 15, 2021  
9:30 a.m.**

**MINUTES**

**OPEN SESSION**

The Chair called the meeting to order at 9:32 pm.

Recording Secretary administered the Roll Call attendance.

Attendance was as follows:

Present via Zoom Video conference pursuant to Government Code § 54953, as amended by AB 361:

Frank Eley, Chair; Shari Freidenrich, Vice Chair; Charles Packard; Jeremy Vallone

Also Present via Zoom:

David Kim, Director of Internal Audit; Steve Delaney, Chief Executive Officer; Gina Ratto, General Counsel; Brenda Shott, Assistant CEO, Internal Operations; Suzanne Jenike, Assistant CEO, External Operations; Jeff Lamberson, Director of Member Services; Jenny Sadoski, Director of Information Technology; Mark Adviento, Internal Auditor; Brittany Cleberg, Recording Secretary; Anthony Beltran, Audio Visual Technician.

**PUBLIC COMMENT**

None.

**C-1 APPROVE AUDIT COMMITTEE MEETING MINUTES**

Audit Committee Meeting Minutes

October 4, 2021

**MOTION** by Packard, **seconded** by Vallone, to approve the Minutes.

The motion passed **unanimously**.

Eide Bailly LLP presented to the Committee.

*The Committee recessed to break at 10:30 a.m.*

*The Committee resumed at 10:45 a.m.*

Macias Gini & O'Connell LLP presented to the Committee.

Audit Committee Meeting  
December 15, 2021

*The Committee recessed to break at 11:30 a.m.  
The Committee resumed at 11:40 a.m.*

Moss Adams LLP presented to the Committee.

**A-2 FINANCIAL AUDITOR INTERVIEWS**

*Introduction by Brenda Shott and Presentations by Eide Bailly LLP; Macias Gini & O'Connell LLP; and Moss Adams LLP*

**Recommendation:** Staff recommends (1) selecting one of the three finalists chosen to make an oral presentation at the December 15, 2021 Audit Committee meeting to serve as OCERS financial auditor based on the firm's presentation, responsiveness to the Audit Committee's questions, and the written proposal submitted; and (2) after conducting such interviews, that the Audit Committee recommend to the Board of Retirement to award a contract for financial auditor services to the selected finalist, subject to satisfactory negotiation of terms.

The Committee interviewed the three finalists, Eide Bailly LLP followed by Macias Gini & O'Connell LLP followed by Moss Adams LLP to serve as the Financial Auditor.

After Committee discussion, MOTION was made by Freidenrich, **seconded** by Packard to (1) select Moss Adams to (2) recommend to the Board of Retirement to award a contract for financial auditor services.

The motion passed **unanimously**.

Ms. Freidenrich departed at 1:22 p.m.

*The Committee recessed to break at 1:22 p.m.  
The Committee resumed at 1:51 p.m.*

*The Committee recessed into Closed Session at 1:53 p.m.  
The Committee resumed at 2:16 p.m.*

**E-1. PUBLIC EMPLOYEE PERFORMANCE EVALUATION (GOVERNMENT CODE §54957(b))**

**Title: Director of Internal Audit**

Adjourn pursuant to Government Code section 54957(b) to evaluate the performance of the Director of Internal Audit

**Recommendation:** Take appropriate action.

The Audit Committee took no reportable action.

**COMMITTEE MEMBER COMMENTS**

Chair Eley thanked Ms. Hockless for her hard work on item E-1 on behalf of the Committee.

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Audit Committee Meeting  
December 15, 2021

**STAFF COMMENTS**

Mr. Kim thanked the Committee for their participation, feedback, and wished them a Happy Holidays.

**CHIEF EXECUTIVE OFFICER**

None

**COUNSEL COMMENTS**

None

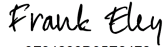
**ADJOURNMENT**

The Chair adjourned the meeting at 2:18 p.m.

Submitted by:

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Steve Delaney  
Secretary to the Board

Approved by:

DocuSigned by:  
  
9F34288D95E2472...  
Frank Eley  
Chair



## Memorandum

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DATE: February 22, 2022  
TO: Members of the Board of Retirement  
FROM: Steve Delaney, Chief Executive Officer  
SUBJECT: **CEO FUTURE AGENDAS AND 2022 OCERS BOARD WORK PLAN**

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### Written Report

#### AGENDA TOPICS FOR THE OCERS BOARD OF RETIREMENT

##### MARCH

- STAR COLA Final Approval
- GFOA awards
- Quarterly 2022-2024 Strategic Plan Review
- SACRS Election Materials
- Semi Annual Business Continuity Disaster Recovery Updates
- CIO Comments

##### APRIL

- Annual Fiduciary Training
- Brown Act Training
- SACRS Board of Directors Election
- CIO Comments

##### MAY

- Preliminary December 31, 2021 valuation
- Review of OCERS Multiple Plans

### Submitted by:



**SD - Approved**

Steve Delaney  
Chief Executive Officer

OCERS RETIREMENT BOARD - 2022 Work Plan

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep (Offsite)	Oct	Nov	Dec
<b>System Oversight</b>	Receive Quality of Member Services Report (I)	STAR COLA Posting (I)	Approve 2022 STAR COLA (A)	SACRS Board of Directors Election (A)	Preliminary December 31, 2021 Valuation (I)	Mid-Year Review of 2022 Business Plan Progress (I)	Alt. Invest. Return and Assumption Sensitivity: 20-year Illustration (I)	Review 2nd Quarter Budget to Actuals Financial Report (I)	Strategic Planning Workshop (I)	Overview of 2023 Administrative Budget and Investment (Workshop) (I)	Review 3rd Quarter Budget to Actuals Financial Report (I)	
	Receive OCERS Innoation Report (I)	Approve 2023 COLA (A)	Quarterly 2022-2024 Strategic Plan Review (A)			Approve December 31, 2021 Actuarial Valuation & Funded Status of OCERS (A)	Actuarial Review: Risk Assessment (I)	Receive OCERS by the Numbers (I)	Annual OCERS Employer Review (I)	Approve 2023-2025 Strategic Plan (A)	Approve 2023 Administrative (Operating) Budget (A)	
						Approve 2021 Comprehensive Annual Financial Report (A)	Approve Early Payment Rates for Fiscal Year 2022-24 (A)	Receive Evolution of the UAAL (I)		Approve 2023 Business Plan (A)	Annual CEO Performance Review and Compensation (A)	
						Quarterly 2022-2024 Strategic Plan Review (A)		Employer & Employee Pension Cost Comparison (I)				
											Adopt 2023 Board Meeting Calendar (A)	
<b>Board Governance</b>				Brown Act Training (biannual) (I)				Sexual Harassment Prevention Trainnig (I)				Adopt Annual Work Plan for 2023 (A)
				Fiduciary Training (I)								Vice-Chair Election (A)
												Receive 2023 Board Committee Assignments (A)
<b>Regulation / Policies</b>	Communication Policy Fact Sheet (I)											
<b>Compliance</b>	Status of Board Education Hours for 2021 (I)			Form 700 Due (A)		Receive Financial Audit (I)			State of OCERS (I)			

(A) = Action (I) = Information



## Memorandum

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**DATE:** February 22, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Jim Doezie, Contracts, Risk and Performance Administrator  
**SUBJECT:** QUIET PERIOD – NON-INVESTMENT CONTRACTS

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### Written Report Background/Discussion

1. **Quiet Period Policy Guidelines**

The following guidelines established by the Quiet Period Policy, section 3.c, will govern a search process for any contract to be awarded by OCERS:

*“...Board Members and OCERS staff shall not knowingly communicate with any party financially interested in any prospective contract with OCERS regarding the contract, the services to be provided under the contract or the selection process;”*

2. **Quiet Period Guidelines**

In addition, the following language is included in all distributed RFP's:

*“From the date of issuance of this RFP until the selection of one or more respondents is completed and announced, respondents are not permitted to communicate with any OCERS staff member or Board Members regarding this procurement, except through the Point of Contact named herein. Respondents violating the communications prohibition may be disqualified at OCERS’ discretion. Respondents having current business with OCERS must limit their communications to the subject of such business.”*

### Distributed RFP's

The RFP's noted below are subject to the quiet period until such time as a contract(s) is finalized.

- An RFP for Financial Auditor Services was distributed in July 2021. This RFP is to put into place a Financial Auditor Agreement as the prior vendor agreement with MGO has expired and cannot be extended. Interviews with the finalists were conducted during the Audit Committee meeting held on December 15 2021. A vendor was selected and approved by the Board of Retirement on January 18, 2022. It is pending execution of a vendor contract.

### Submitted by:



**JD - Approved**

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Jim Doezie  
Contracts, Risk and Performance Administrator



## Memorandum

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**DATE:** February 22, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Steve Delaney, Chief Executive Officer  
**SUBJECT: BOARD COMMUNICATIONS**

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### Written Report

#### Background/Discussion

To ensure that the public has free and open access to those items that could have bearing on the decisions of the Trustees of the Board of Retirement, the OCERS Board has directed that all written communications to the entire Board during the interim between regular Board meetings be included in a monthly communications summary.

#### News Links

The various news and informational articles that have been shared with the full Board are being provided to you here by web link address. By providing the links in this publicly available report, we comply with both the Brown Act public meeting requirements, as well as avoid any copyright issues.

The following news and informational item was provided by staff and the CEO for distribution to the entire Board:

#### Steve Delaney:

- Recognition in industry magazine that there is a place for Artificial Intelligence in pension management  
<https://industrywired.com/the-impact-of-technology-on-modern-pension-funds/>
- Suggesting specific areas of pension administration processes that could be candidates for machine learning, robotic process automation, and other early flavors of AI implementation. The OCERS AI ad hoc Committee has been discussing nearly all of these areas for consideration.  
<https://www.procentia.com/gb/news/the-potential-of-ai-in-transforming-the-pension-industry>
- OCERS is at the very start of the AI process, this article suggests that is a good place to be, with examples of some of the basic tasks that this technology can take on, we just need to be willing to “think outside of the box”  
<https://www.jpost.com/business-and-innovation/opinion/article-695662>



**Robert Kinsler:**

- <https://finance.yahoo.com/news/orange-county-employees-retirement-system-140000499.html>
- <https://www.wsj.com/pro/private-equity>
- <https://www.ai-cio.com/news/private-credit-too-risky-not-for-asset-allocators/>

Attached:

- December 2021 Summary

**Submitted by:**



**SD - Approved**

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Steve Delaney  
Chief Executive Officer



# Monthly Team Status

## December 2021

To the members of the OCERS Board of Retirement,

The following is my regular monthly summary of OCERS' team activity, starting with an overview of key customer service statistics as well as activity highlights followed by updates for December, 2021.

### MEMBER SERVICES MONTHLY METRICS

Retirement Applications Received				2021 Customer Service Statistics					
Month	2019	2020	2021	Unplanned Recalculations	Member Satisfaction Approval Rate	Queue Calls Received	Direct to Extension Calls	Operator Calls Received	Total Calls (monthly)
January	261	254	101	2	100%	2,606	4,867	992	8,465
February	201	169	90	1	100%	2,618	4,839	1,811	9,268
March	206	80	57	1	95%	2,947	5,630	1,599	10,176
April	38	33	41	0	95%	2,830	5,120	1,146	9,096
May	44	47	55	4	95%	2,552	4,731	973	8,256
June	52	63	52	1	95%	2,010	4,601	747	7,358
July	56	288	71	4	95%	1,936	4,375	834	7,145
August	65	229	61	2	95%	1,745	4,091	360	6,196
September	41	114	73	0	95%	1,983	4,368	691	7,042
October	69	57	38	0	95%	2,270	4,333	669	7,272
November	54	52	96	0	95%	1,760	4,121	571	6,452
December	75	66	93	0	95%	2,148	4,755	709	7,612
<b>Grand Total</b>	<b>1162</b>	<b>1452</b>	<b>828</b>	<b>15</b>	<b>96%</b>	<b>27,405</b>	<b>55,831</b>	<b>11,102</b>	<b>94,338</b>

### MEMBER SURVEY RESPONSE

"I called last week to start my retirement and I got a hold of a representative who was such a great help. They went far beyond the call of duty and went out of their way to help me. I had very specific questions regarding my situation and this representative helped me through it and was really very patient. I just want to thank you for having an employee like that on duty to make me feel at ease in this somewhat stressful time. Thank you very much and give that representative a thumbs up."

**December 2021**

"I would like to submit a compliment and recognize one of your customer service representatives for their efforts to assist me with understanding the 415 Pension CAP process. They were very professional, listened carefully to my questions, and followed up with answers in a very timely manner. This team member is a fantastic representative for OCERS. I was so impressed that I had to send this message indicating how pleased I was with their assistance. Thank You."

**November 2021**

"I have dealt with OCERS through the past 10 years and no one by far has been as helpful, courteous, thorough, and a joy to speak with then the customer service representative that assisted me! I've been blessed each time I've called to speak with them, and it makes it so much easier to understand."

**October 2021**



# Monthly Team Status

## December 2021

### ACTIVITIES

#### OCERS STAFFING

I do believe the OCERS Human Resources Department is going to be challenged through the first half of 2022 in bringing on a very large number of new staff members. With 7 individuals having already left or indicated they are leaving current OCERS service, and with 12 new positions approved, which will likely entail some internal promotions leading to yet further vacancies, the work ahead is formidable. I have asked Ms. Hockless to provide in this report each month, a summary of staffing activities to that date. Separately, I will ask that she provided a verbal update to the Board on a quarterly basis. You will find attached Ms. Hockless' first update report attached to the e-mail sending you this monthly activities report. [See attached]

#### INVESTMENT TEAM

As of November 30, 2021, the portfolio year-to-date is up 13.2% net of fees, while the one-year return is up 17.6%. The Fund value now stands at \$21.8 billion. The OCERS Investment Team continued to work effectively remotely during the coronavirus pandemic in December. OCERS' Investment Team closed on one new private equity buyout fund, one re-up private equity growth equity fund, and one private equity co-investment in the Financials industry during December. OCERS' Investment Team and Aksia TorreyCove completed the real assets asset class review during the month. The real assets pacing plan includes \$200 million to \$250 million in real assets commitments for 2022. The OCERS Investment Team conducted Zoom interviews with the semifinalists for general consultant, private equity consultant, real assets consultant, and real estate consultant. The Investment Team interviewed three firms for general consultant, four firms for private equity and real assets consultant, and three firms for real estate consultant during this round. Finally, Molly Murphy and Steve Delaney conducted second round interviews in December for the open Director of Investments position.

### UPDATES

#### 100% ACCURACY PROJECT

Internal Audit has completed Q4 testing of 134 Final Average Salary calculations out of 154 total applications in the final quarter of 2021. Internal Audit is reviewing the results with Member Services and will be presenting the report at the January 27, 2022 Audit Committee meeting.



# Monthly Team Status

## December 2021

### ALAMEDA RECALCULATION PROJECT

The team continues to make progress on the *Alameda* implementation. We have been working with Vitech on an automated process that will allow us to remove the pay items from the member's V3 accounts. Once we are satisfied that the functionality has been fully implemented we will begin testing member accounts. Letters have been mailed, or are the process of being mailed, to all members impacted. We have not begun recalculating accounts but want to make sure the members are fully informed of the status of the implementation.

### VISION 2030

The AI ad hoc Committee met twice in December. Much discussion centered on planning RFPs in early 2022 for assistance in Robotic Process Automation as well as early development of a new Pension Administration System. Outreach has also begun to a number of institutions of higher education to see if there might be opportunities for synergy via coordination with their IT or business programs and gain. Outreach to the Los Angeles County pension system to learn more about their AI endeavors brought clarity from their Deputy Director. They are presently completing interviews following an RFP process for a "Case Management System" with some customer service functionality. It appears to be an "Other Automation Opportunity", which is separate from our approach. It's not fundamentally an RPA/ML/AI project, but is still an automation opportunity, and we will maintain close contact with our sister system to look for shared opportunities of advancement.



As a reminder, you will see this memo included with the BOARD COMMUNICATIONS document as part of the informational agenda for the February 22, 2022 meeting of the OCERS Board of Retirement.



## Memorandum

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**DATE:** February 22, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Gina M. Ratto, General Counsel  
**SUBJECT:** LEGISLATIVE UPDATE

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### Written Report

#### *State Legislative Update*

The California Legislature reconvened for the second year of the 2021-22 Legislative Session on Monday, January 3rd. Legislators have until February 18<sup>th</sup> to introduce new legislation.

A comprehensive list and summary of the pending bills that staff is monitoring during the second year of the 2021-2022 legislative session is attached. This update was prepared on and is current as of February 8, 2022. We expect many bills to be introduced between the date of this report and the deadline to introduce new bills. Below are the bills that may be of greater interest to the Board. **New or updated information since the last report to the Board in October 2021 are indicated in bold text.**

#### SACRS Sponsored Bill

The SACRS membership approved the SACRS proposed legislation (annual CERL housekeeping bill) at the Fall Conference last November<sup>1</sup>. (See attachment.) The SACRS Legislative Committee and lobbyists are now having the relevant discussions in the Legislature to get the proposals introduced into bills. Approximately half of the proposals in the approved SACRS Sponsored Bill will be placed into the annual omnibus committee cleanup bill. (See AB 1824 below.) The other half of the proposals, while not controversial, will need to be placed in a policy bill because they are more than “technical cleanup” amendments suitable for an omnibus bill. The SACRS lobbying team is in the process of securing a legislator to author this second bill.

#### Bills that Would Amend the CERL or PEPR

##### **AB 498 (Quirk-Silva)**

CERL defines compensation earnable for purposes of its provisions, with particular application to the calculation of final compensation and the determination of pension amounts and other benefits. In this regard, “compensation earnable” by a member means the average compensation as determined by the retirement board, for the period considered based on the average number of days ordinarily worked by persons in the same grade or class of positions during the period, as specified. PEPR prescribes various limitations on public

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<sup>1</sup> The proposed legislation was approved by the OCERS Board at its October 18, 2021 meeting.

employees, employers, and retirement systems concerning, among other things, the types of remuneration that may be included in compensation that is applied to pensions.

This bill would delete the term “grade” and replace it with the term “group” for purposes of the definition of compensation earnable, as described above. The bill would define the phrase “group or class of positions” for purposes of this definition to mean a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical work-related grouping, and would specify that a single employee is not a group or class. The bill would state that its changes are declaratory of existing law and would make a declaration of legislative intent in regards to its application.

(STATUS: AB 498 was originally introduced as a Computer Science Access Initiative. AB 498 passed out of the Assembly and was ordered to the Senate on 05/27/21. In the Senate on 09/10/21, the bill was gutted and replaced with language to amend the CERL. It was referred to Com. on RLS on 09/10/21.)

### **AB 826 (Irwin)**

This bill, which would apply only in Ventura County, would provide that compensation and compensation earnable include flexible benefits plan allowances paid by a county or a district on behalf of its employees as part of a cafeteria plan, as specified, if certain requirements are met. Among these conditions, the bill would require that the retirement system included the flexible benefit plan allowance as part of compensation earnable as of July 30, 2020, that the employer and employee paid contributions to the retirement system based on the flexible benefit plan allowance, and that an employer and an employee continues to pay those contributions as employee earns this allowance. The bill would apply these provisions to eligible members who have retired prior to the effective date of the measure and would state that these provisions are declarative of existing law.

The bill would add section 31461.7 to the Government Code, to read:

(a) This section applies only to a county of the thirteenth class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28034, as amended by Chapter 1204 of the Statutes of 1971.

(b) (1) Compensation, as defined in Section 31460, and compensation earnable, as defined in Section 31461, include flexible benefits plan allowances paid by a county or a district on behalf of its employees as part of a cafeteria plan offered pursuant to Section 125 of the Internal Revenue Code if all of the following requirements are met:

(A) The flexible benefit plan allowance is made available to any person in the same grade or class of positions. For purposes of this subdivision, “grade or class of positions” means a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical, work-related grouping. A single employee shall not be considered a grade or class of positions.

(B) The flexible benefit plan allowance is not expressly excluded from “compensation earnable” pursuant to paragraphs (2) to (4), inclusive, of subdivision (b) of Section 31461.

(C) The retirement system included the flexible benefit plan allowance as part of compensation earnable as of July 30, 2020, and the employer and employee paid contributions to the retirement system based on the flexible benefit plan allowance as of that date.

(D) The employer and employee pay the required contributions to the retirement system as the employee continues to earn the flexible benefit plan allowance.

(2) For employee groups in which the monetary amount of the flexible benefits plan allowance is the same for all employees, regardless of the number of dependents, the entire amount shall be included in compensation earnable. For employee groups in which the monetary amount of the flexible benefits plan allowance varies among employees depending on the number of dependents, the amount included in compensation earnable shall be the amount provided to an employee with no dependents.

(c) This section shall only apply to employees who are not new members, as defined in Section 7522.04.

(d) Paragraphs (1) and (2) of subdivision (b) shall apply to any eligible member who has retired prior to the effective date of this section, as permitted by subdivision (a) of Section 31481.

(e) This section is declarative of existing law.

(STATUS: Introduced 02/16/21 as bill to amend the Public Resources Code. Bill was gutted and replaced with language that would amend the CERL on 06/21/21. In Senate, read third time, amended to apply only in Ventura County and ordered to second reading on 08/31/21. Read second time and ordered to third reading on 09/01/21. Ordered to inactive file at the request of Senator Limón on 09/08/21.)

**AB 1824 (Cooper, Voepel, Calderon, Cooley, O'Donnell, and Seyarto)**

**This bill represents the annual omnibus bill to propose technical "housekeeping" amendments to the CERL, the PERL, and Education Code provisions applicable to CalSTRS.**

**With respect to the CERL, the bill would make the following changes:**

- 1. The CERL requires, upon the death of a member, the payment of a retirement allowance earned but not yet paid to a member to be paid to the member's designated beneficiary. The CERL requires, upon the death of a person receiving a survivor's allowance, the payment of any allowance earned but not yet paid to the survivor to be paid to the survivor's designated beneficiary. This bill would amend Government Code section 31452.7 to include a corporation, a trust, or an estate in the definition of "beneficiary" for purposes of these provisions.**
- 2. The CERL restricts the types of employment for which members may receive credit for service and restricts credit for other employment in public service based upon whether the member is entitled to receive a pension or retirement allowance from another public agency. If a member elects to contribute to obtain credit for other employment in another public agency, the CERL requires certification, as specified, of the fact that pension or retirement allowance will not accrue to the member by virtue of the member's employment. This bill would amend Government Code section 31641.4 to specify that the provisions described above do not prohibit a member from receiving credit for a period of federal public service if federal law expressly permits the credit even though the member is already entitled to receive a pension or retirement allowance from that service.**
- 3. The CERL prescribes a process for purposes of establishing a date of retirement with reference to safety members. Further, the CERL authorizes a safety member to be retired upon the occurrence of certain events and the filing, with the retirement board, of a written application setting forth the date upon which the member desires their retirement to become effective. The CERL prohibits this date**



from being more than 60 days after the date of filing the application. This bill would amend Government Code sections 31663.25 and 31663.26 to revise the restrictions on the above-described effective retirement date to prohibit the retirement date from being earlier than the date the application is filed with the board or more than 60 days after the date of filing the application or more than a number of days that has been approved by the board.

4. The CERL authorizes the payment of a death benefit upon the death of a member while in service. It further prescribes the components of the death benefit, which are a member's accumulated contributions and an amount, provided from contributions by a county or district, calculated pursuant to a specified method, not to exceed 50% of annual compensation earnable or pensionable compensation of the deceased. This bill would amend Government Code sections 31761, 31762, 31763, 31764 and 31781 to require, in connection with the calculation of the death benefit, that the computation for any absence be based on the compensation of the position held by the member at the beginning of the absence.
5. The bill would also make non-substantive style and technical changes to the CERL. (Government Code sections 31726 and 31726.5.)

(STATUS: Introduced 02/07/22.)

#### Bills that Would Amend the Brown Act

**AB 339 (Lee)** This bill would, until December 31, 2023, require all open and public meetings of a city council or a county board of supervisors that governs a jurisdiction containing least 250,000 people to include an opportunity for members of the public to attend via two-way a telephonic option or a two-way internet-based service option, as specified, and would require a city council or county board of supervisors that has, as of June 15, 2021, provided video streaming, as defined, of at least one of its meetings to continue to provide that video streaming. It would also require all open and public meetings to include an in-person public comment opportunity, except in specified circumstances during a declared state or local emergency. The bill would require all meetings to provide the public with an opportunity to comment on proposed legislation in person and remotely via a telephonic or an internet-based service option, as provided. This bill would incorporate additional changes to Section 54953 of the Government Code proposed by AB 361 to be operative only if this bill and AB 361 are enacted and this bill is enacted last.

(STATUS: Vetoed by Governor on 10/07/21. Consideration of Governor's veto pending on 01/03/22. Striken from file on 02/03/2022.)

#### Bills that Would Amend Other Laws Applicable to OCERS

None to report.

#### Other Bills of Interest

##### **AB 1795 (Fong)**

**The Bagley-Keene Open Meeting Act, requires state bodies to allow all persons to attend meetings and provide an opportunity for the public to address the state body regarding any item included in its agenda,**



except as specified. This bill would require state bodies, subject to existing exceptions, to provide all persons the ability to participate both in-person and remotely, as defined, in any meeting and to address the body remotely.

(STATUS: Introduced on 02/07/22.)

**SB 931 (Leyva)**

Current law prohibits a public employer from deterring or discouraging public employees or applicants to be public employees from becoming or remaining members of an employee organization, authorizing representation by an employee organization, or authorizing dues or fee deductions to an employee organization. Current law generally vests jurisdiction over violations of these provisions in the Public Employment Relations Board. This bill would authorize an employee organization, as described, to bring a claim before the Public Employment Relations Board alleging that a public employer violated the above-described provisions.

(STATUS: Introduced 02/07/22. Read first time; referred to Com. on RLS. for assignment; Art. IV. Sec. 8(a) of the Constitution dispensed with; Joint Rule 55 suspended 02/07/22.)

**Bills that Apply to CalPERS and/or CalSTRS Only**

**AB 386 (Cooper)**

The California Public Records Act requires state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies. Current law excludes from disclosure certain records regarding alternative investments in which public investment funds invest. This bill would exempt from disclosure under the act specified records regarding an internally managed private loan made directly by CalPERS. Under the bill, these records would include quarterly and annual financial statements of the borrower or its constituent owners, unless the information has already been publicly released by the keeper of the information. The bill would prescribe specified exceptions to the new exemption from disclosure.

(STATUS: Passed out of Assembly and ordered to Senate on 06/01/21. Read first time in Senate on 06/02/21. Read second time, amended, and re-referred to Com. on JUD on 06/29/21. In committee: Set, first hearing; failed passage; and reconsideration granted on 07/13/21.)

**AB 551 (Rodriguez)**

Current law authorizes CalSTRS to administer an individual retirement plan described in Section 408A of Title 26 of the United States Code, commonly referred to as a Roth IRA, for the purpose of accepting a rollover from an annuity contract or custodial account offered by the system to the extent the rollover complies with specified federal law. Current law establishes the Teachers' Deferred Compensation Fund, which is continuously appropriated, to serve as the repository of funds received by the system for various deferred compensation plans, and specifies where in the fund certain premium and fee revenues received by the system are to be deposited. This bill would also authorize the system to administer an individual retirement plan as described in Section 408 of Title 26 of the United States Code. The bill would eliminate the requirement that the administration of these plans be for the purpose of accepting a rollover from an annuity contract or custodial account offered by the system, as described above. The bill would instead specify categories of people for whom the system could provide this service, including certain former eligible employees and their spouses.

(STATUS: Passed out of Assembly and ordered to Senate on 01/27/22. Read first time in Senate and ordered to Com. on RLS. for assignment on 01/27/22.)

**AB 1667 (Cooper)**

CalSTRS is administrated by the Teachers' Retirement Board. Current law also creates the Cash Balance Benefit Program, which is administered by the board, to provide a retirement plan for the benefit of participating employees who provide creditable service for less than 50% of full time. Current law generally authorizes the board, in its discretion and upon any terms it deems just, to correct the errors or omissions of any member or beneficiary of the Defined Benefit Program, and of any participant or beneficiary of the Cash Balance Benefit Program, if specified facts exist. This bill would state the intent of the Legislature to enact legislation related to CalSTRS, including, among other things, in connection with employee liability for system errors in payments, guidance provided by the system later determined to be erroneous, changes to interpretations of creditable compensation laws by the system, and system audits.

(STATUS: Introduced 01/19/2022. May be heard in committee February on 01/20/22.)

**AB 1722 (Cooper)**

The PERL, until January 1, 2023, provides a state safety member of CalPERS who retires for industrial disability a retirement benefit equal to the greatest amount resulting from 3 possible calculations. In this regard, the benefit amount is based on an actuarially reduced service retirement, a service retirement allowance, if the member is qualified, or 50% of the member's final compensation, plus an annuity purchased with their accumulated contributions, if any. This bill would delete the termination of these provisions on January 1, 2023, thereby making them operative in perpetuity. By providing that a continuously appropriated fund may be spent for a new purpose, this bill would make an appropriation.

(STATUS: Introduced 01/27/22. Referred to Com. on P.E.&R on 02/03/22.)

**AB 1801 (Nazarian)**

Current law requires present, future, and former board members of CalPERS or CalSTRS, jointly and individually, state officers and employees, specified research firms, and investment managers under contract with these retirement systems to be indemnified from the General Fund and held harmless by the State of California from all claims, demands, suits, actions, damages, judgments, costs, charges, and expenses, and against all liability, losses, and damages that those persons or entities may sustain by reason of a decision to restrict, reduce, or eliminate certain types of investments. This bill would make non-substantive changes to those provisions.

(STATUS: Introduced 02/07/22.)

**SB 457 (Portatino & Wilk)**

This bill would require the boards of CalPERS and CalSTRS to provide employers that are school districts and cities that participate in the systems an option to elect an investment portfolio that does not contain investment vehicles that are issued or owned by the government of the Republic of Turkey.

(STATUS: Passed out of the Senate; ordered to Assembly on 05/24/21. Referred to Com. on P.E & R on 05/28/21.)

**SB 868 (Cortese)**

**Current law creates the Teachers' Retirement Fund and establishes within that fund a segregated account named the Supplemental Benefit Maintenance Account. Current law continuously appropriates funds in the Supplemental Benefit Maintenance Account for expenditure for the purpose of restoring the purchasing power of the allowances of retired members and nonmember spouses, disabled members, and beneficiaries, and prescribes various schedules pursuant to which these allowances are augmented. This bill would prescribe additional benefits to be paid quarterly from the Supplemental Benefit Maintenance Account, beginning July 1, 2023, to retired members and nonmember spouses, disabled members, and beneficiaries, to be made pursuant to a specified schedule. By providing for additional payments to be made from a continuously appropriated fund, this bill would make an appropriation. The bill would require the amount of these increases to be determined on July 1, 2023, as specified, and would require that amount to be increased each year commencing on July 1, 2024, but not compounded. The bill would specify that these increases are not part of the base allowance, are payable only to the extent that funds are available from the Supplemental Benefit Maintenance Account, and would state the extent to which these payments would be vested. (STATUS: Introduced 01/24/22. Referred to Com. on L., P.E. & R. on 02/02/22.)**

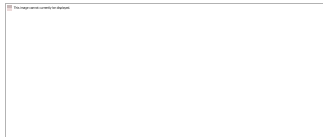
Attachments:

Legislative Update

SACRS Approved CERL Housekeeping Provisions

2022 Legislative Calendar

**Submitted by:**



Gina M. Ratto  
General Counsel



**OCERS BOARD OF RETIREMENT  
FEBRUARY 22, 2022 MEETING**

**LEGISLATIVE UPDATE – ATTACHMENT (CURRENT AS OF FEBRUARY 8, 2022)  
2021 - 2022 CALIFORNIA STATE LEGISLATIVE SESSION  
BILLS OF INTEREST**

*New or updated information in bold text*

**AB 339 (Lee)**

This bill would, until December 31, 2023, require all open and public meetings of a city council or a county board of supervisors that governs a jurisdiction containing least 250,000 people to include an opportunity for members of the public to attend via two-way a telephonic option or a two-way internet-based service option, as specified, and would require a city council or county board of supervisors that has, as of June 15, 2021, provided video streaming, as defined, of at least one of its meetings to continue to provide that video streaming. It would also require all open and public meetings to include an in-person public comment opportunity, except in specified circumstances during a declared state or local emergency. The bill would require all meetings to provide the public with an opportunity to comment on proposed legislation in person and remotely via a telephonic or an internet-based service option, as provided. This bill would incorporate additional changes to Section 54953 of the Government Code proposed by AB 361 to be operative only if this bill and AB 361 are enacted and this bill is enacted last.

**(STATUS: Vetoed by Governor on 10/07/21. Consideration of Governor’s veto pending on 01/03/22. Striken from file on 02/03/2022.)**

**AB 386 (Cooper)**

The California Public Records Act requires state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies. Current law excludes from disclosure certain records regarding alternative investments in which public investment funds invest. This bill would exempt from disclosure under the act specified records regarding an internally managed private loan made directly by CalPERS. Under the bill, these records would include quarterly and annual financial statements of the borrower or its constituent owners, unless the information has already been publicly released by the keeper of the information. The bill would prescribe specified exceptions to the new exemption from disclosure.

**(STATUS: Read first time in Senate on 06/02/21. Read second time, amended, and re-referred to Com. on JUD on 06/29/21. In committee: Set, first hearing; failed passage; and reconsideration granted on 07/13/21.)**

**AB 498 (Quirk-Silva)**

CERL defines compensation earnable for purposes of its provisions, with particular application to the calculation of final compensation and the determination of pension amounts and other benefits. In this regard, “compensation earnable” by a member means the average compensation as determined by the retirement board, for the period considered based on the average number of days ordinarily worked by persons in the same

grade or class of positions during the period, as specified. PEPRAs prescribes various limitations on public employees, employers, and retirement systems concerning, among other things, the types of remuneration that may be included in compensation that is applied to pensions.

This bill would delete the term “grade” and replace it with the term “group” for purposes of the definition of compensation earnable, as described above. The bill would define the phrase “group or class of positions” for purposes of this definition to mean a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical work-related grouping, and would specify that a single employee is not a group or class. The bill would state that its changes are declaratory of existing law and would make a declaration of legislative intent in regards to its application.

(STATUS: AB 498 was originally introduced as a Computer Science Access Initiative. Passed out of the Assembly and ordered to the Senate on 05/27/21. In the Senate on 09/10/21, the bill was gutted and replaced with language to amend the CERL. It was referred to Com. on RLS on 09/10/21.)

**AB 551 (Rodriguez)**

Current law authorizes CalSTRS to administer an individual retirement plan described in Section 408A of Title 26 of the United States Code, commonly referred to as a Roth IRA, for the purpose of accepting a rollover from an annuity contract or custodial account offered by the system to the extent the rollover complies with specified federal law. Current law establishes the Teachers’ Deferred Compensation Fund, which is continuously appropriated, to serve as the repository of funds received by the system for various deferred compensation plans, and specifies where in the fund certain premium and fee revenues received by the system are to be deposited. This bill would also authorize the system to administer an individual retirement plan as described in Section 408 of Title 26 of the United States Code. The bill would eliminate the requirement that the administration of these plans be for the purpose of accepting a rollover from an annuity contract or custodial account offered by the system, as described above. The bill would instead specify categories of people for whom the system could provide this service, including certain former eligible employees and their spouses.

(STATUS: **Passed out of the Assembly and ordered to the Senate on 01/27/22. Read first time in Senate and ordered to Com. on RLS. for assignment on 01/27/22.**)

**AB 826 (Irwin)**

This bill, which would apply only in Ventura County, would provide that compensation and compensation earnable include flexible benefits plan allowances paid by a county or a district on behalf of its employees as part of a cafeteria plan, as specified, if certain requirements are met. Among these conditions, the bill would require that the retirement system included the flexible benefit plan allowance as part of compensation earnable as of July 30, 2020, that the employer and employee paid contributions to the retirement system based on the flexible benefit plan allowance, and that an employer and an employee continues to pay those contributions as employee earns this allowance. The bill would apply these provisions to eligible members who retired prior to the effective date of the measure and would state that these provisions are declaratory of existing law.

The bill would add section 31461.7 to the Government Code, to read:

(a) This section applies only to a county of the thirteenth class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28034, as amended by Chapter 1204 of the Statutes of 1971.

(b) (1) Compensation, as defined in Section 31460, and compensation earnable, as defined in Section 31461, include flexible benefits plan allowances paid by a county or a district on behalf of its employees as part of a cafeteria plan offered pursuant to Section 125 of the Internal Revenue Code if all of the following requirements are met:

(A) The flexible benefit plan allowance is made available to any person in the same grade or class of positions. For purposes of this subdivision, "grade or class of positions" means a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical, work-related grouping. A single employee shall not be considered a grade or class of positions.

(B) The flexible benefit plan allowance is not expressly excluded from "compensation earnable" pursuant to paragraphs (2) to (4), inclusive, of subdivision (b) of Section 31461.

(C) The retirement system included the flexible benefit plan allowance as part of compensation earnable as of July 30, 2020, and the employer and employee paid contributions to the retirement system based on the flexible benefit plan allowance as of that date.

(D) The employer and employee pay the required contributions to the retirement system as the employee continues to earn the flexible benefit plan allowance.

(2) For employee groups in which the monetary amount of the flexible benefits plan allowance is the same for all employees, regardless of the number of dependents, the entire amount shall be included in compensation earnable. For employee groups in which the monetary amount of the flexible benefits plan allowance varies among employees depending on the number of dependents, the amount included in compensation earnable shall be the amount provided to an employee with no dependents.

(c) This section shall only apply to employees who are not new members, as defined in Section 7522.04.

(d) Paragraphs (1) and (2) of subdivision (b) shall apply to any eligible member who has retired prior to the effective date of this section, as permitted by subdivision (a) of Section 31481.

(e) This section is declarative of existing law.

(STATUS: Introduced 02/16/21 as bill to amend the Public Resources Code. Bill was gutted and replaced with language that would amend the CERL on 06/21/21. In Senate, read third time, amended to apply only in Ventura County and ordered to second reading on 08/31/21. Read second time and ordered to third reading on 09/01/21. Ordered to inactive file at the request of Senator Limón on 09/08/21.)

#### **AB 1667 (Cooper)**

**CalSTRS is administered by the Teachers' Retirement Board. Current law creates the Cash Balance Benefit Program, which is also administered by the board to provide a retirement plan for the benefit of participating employees who provide creditable service for less than 50% of full time. Current law generally authorizes the**

board, in its discretion and upon any terms it deems just, to correct the errors or omissions of any member or beneficiary of the Defined Benefit Program, and of any participant or beneficiary of the Cash Balance Benefit Program, if specified facts exist. This bill would state the intent of the Legislature to enact legislation related to CalSTRS, including, among other things, in connection with employee liability for system errors in payments, guidance provided by the system later determined to be erroneous, changes to interpretations of creditable compensation laws by the system, and system audits.

(STATUS: Introduced 01/19/2022. May be heard in committee February on 01/19/22.)

**AB 1722 (Cooper)**

The PERL, until January 1, 2023, provides a state safety member of CalPERS who retires for industrial disability a retirement benefit equal to the greatest amount resulting from 3 possible calculations. In this regard, the benefit amount is based on an actuarially reduced service retirement, a service retirement allowance, if the member is qualified, or 50% of the member's final compensation, plus an annuity purchased with their accumulated contributions, if any. This bill would delete the termination of these provisions on January 1, 2023, thereby making them operative in perpetuity. By providing that a continuously appropriated fund may be spent for a new purpose, this bill would make an appropriation.

(STATUS: Introduced 01/27/22. Referred to Com. on P.E.&R on 02/03/22.)

**AB 1795 (Fong)**

The Bagley-Keene Open Meeting Act requires state bodies to allow all persons to attend meetings and provide an opportunity for the public to address the state body regarding any item included in its agenda, except as specified. This bill would require state bodies, subject to existing exceptions, to provide all persons the ability to participate both in-person and remotely, as defined, in any meeting and to address the body remotely.

(STATUS: Introduced on 02/07/22.)

**AB 1801 (Nazarian)**

Current law requires present, future, and former board members of CalPERS or CalSTRS, jointly and individually, state officers and employees, specified research firms, and investment managers under contract with these retirement systems to be indemnified from the General Fund and held harmless by the State of California from all claims, demands, suits, actions, damages, judgments, costs, charges, and expenses, and against all liability, losses, and damages that those persons or entities may sustain by reason of a decision to restrict, reduce, or eliminate certain types of investments. This bill would make nonsubstantive changes to those provisions.

(STATUS: Introduced 02/07/22.)

**AB 1824 (Cooper, Voepel, Calderon, Cooley, O'Donnell, and Seyarto)**

**This bill represents the annual omnibus bill to propose technical "housekeeping" amendments to Education Code provisions applicable to CalSTRS, the PERL and the CERL.**

With respect to the CERL, the bill would make the following changes:

1. The CERL requires, upon the death of a member, the payment of a retirement allowance earned but not yet paid to a member to be paid to the member's designated beneficiary. The CERL requires, upon the death of a person receiving a survivor's allowance, the payment of any allowance earned but not yet paid to the survivor to be paid to the survivor's designated beneficiary. This bill would amend Government Code section 31452.7 to include a corporation, a trust, or an estate in the definition of "beneficiary" for purposes of these provisions.
2. The CERL restricts the types of employment for which members may receive credit for service and restricts credit for other employment in public service based upon whether the member is entitled to receive a pension or retirement allowance from another public agency. If a member elects to contribute to obtain credit for other employment in another public agency, the CERL requires certification, as specified, of the fact that pension or retirement allowance will not accrue to the member by virtue of the member's employment. This bill would amend Government Code section 31641.4 to specify that the provisions described above do not prohibit a member from receiving credit for a period of federal public service if federal law expressly permits the credit even though the member is already entitled to receive a pension or retirement allowance from that service.
3. The CERL prescribes a process for purposes of establishing a date of retirement with reference to safety members. Further, the CERL authorizes a safety member to be retired upon the occurrence of certain events and the filing, with the retirement board, of a written application setting forth the date upon which the member desires their retirement to become effective. The CERL prohibits this date from being more than 60 days after the date of filing the application. This bill would amend Government Code sections 31663.25 and 31663.26 to revise the restrictions on the above-described effective retirement date to prohibit the retirement date from being earlier than the date the application is filed with the board or more than 60 days after the date of filing the application or more than a number of days that has been approved by the board.
4. The CERL authorizes the payment of a death benefit upon the death of a member while in service. It further prescribes the components of the death benefit, which are a member's accumulated contributions and an amount, provided from contributions by a county or district, calculated pursuant to a specified method, not to exceed 50% of annual compensation earnable or pensionable compensation of the deceased. This bill would amend Government Code sections 31761, 31762, 31763, 31764 and 31781 to require, in connection with the calculation of the death benefit, that the computation for any absence be based on the compensation of the position held by the member at the beginning of the absence.
5. The bill would also make non-substantive style and technical changes to the CERL. (Government Code sections 31726 and 31726.5.)

**(STATUS: Introduced 02/07/22.)**

**SB 457 (Portatino & Wilk)**

This bill would require the boards of CalPERS and CalSTRS to provide employers that are school districts and cities that participate in the systems an option to elect an investment portfolio that does not contain investment vehicles that are issued or owned by the government of the Republic of Turkey.



(STATUS: Passed out of the Senate; ordered to Assembly on 05/24/21. Referred to Com. on P.E & R on 05/28/21.)

**SB 868 (Cortese)**

**Current law creates the Teachers' Retirement Fund and establishes within that fund a segregated account named the Supplemental Benefit Maintenance Account. Current law continuously appropriates funds in the Supplemental Benefit Maintenance Account for expenditure for the purpose of restoring the purchasing power of the allowances of retired members and nonmember spouses, disabled members, and beneficiaries, and prescribes various schedules pursuant to which these allowances are augmented. This bill would prescribe additional benefits to be paid quarterly from the Supplemental Benefit Maintenance Account, beginning July 1, 2023, to retired members and nonmember spouses, disabled members, and beneficiaries, to be made pursuant to a specified schedule. By providing for additional payments to be made from a continuously appropriated fund, this bill would make an appropriation. The bill would require the amount of these increases to be determined on July 1, 2023, as specified, and would require that amount to be increased each year commencing on July 1, 2024, but not compounded. The bill would specify that these increases are not part of the base allowance, are payable only to the extent that funds are available from the Supplemental Benefit Maintenance Account, and would state the extent to which these payments would be vested.**

**(STATUS: Introduced 01/24/22. Referred to Com. on L., P.E. & R on 02/02/22.)**

**SB 931 (Leyva)**

**Current law prohibits a public employer from deterring or discouraging public employees or applicants to be public employees from becoming or remaining members of an employee organization, authorizing representation by an employee organization, or authorizing dues or fee deductions to an employee organization. Current law generally vests jurisdiction over violations of these provisions in the Public Employment Relations Board. This bill would authorize an employee organization, as described, to bring a claim before the Public Employment Relations Board alleging that a public employer violated the above-described provisions.**

**(STATUS: Introduced 02/07/22. Read first time; referred to Com. on RLS. for assignment; Art. IV. Sec. 8(a) of the Constitution dispensed with; Joint Rule 55 suspended 02/07/22.)**



September 20, 2021

RE: SACRS-Sponsored Legislation in 2022

Dear SACRS Board of Directors,

The SACRS Legislative Committee recommends that SACRS sponsor legislation in 2022 to amend various sections of the County Employees' Retirement Law of 1937 (CERL).

At its September 17, 2021 meeting, the Legislative Committee approved bill language for a CERL Omnibus Bill and recommended approval by the SACRS Board of Directors. If approved by the SACRS membership at the Fall Conference, the bill language can be introduced in January 2022 for consideration during the 2022 legislative session.

The enclosed language reflects the work of Legislative Committee members, in collaboration with system administrators, over the past year to develop non-controversial, technical, and clarifying amendments to the CERL.

A summary matrix and draft bill language are attached.

If you have questions or would like to provide additional feedback, please contact us at [dnelsen@acera.org](mailto:dnelsen@acera.org) or [sterne@saccounty.net](mailto:sterne@saccounty.net).

Respectfully,

/s/

David Nelsen and Eric Stern  
Co-Chairs, Legislative Committee

#### ATTACHMENTS

- Summary Matrix
- Draft Bill Language

As of September 2021

## 2022 CERL Clean-Up Bill

Issue	Gov Code	Topic	Issue/Justification
1	31452.7	Beneficiaries - Designating Estate	This amendment would allow a member to designate a corporation, trust, or estate to receive his or her last check upon death. This does not allow an estate or trust to receive ongoing payments. Note: Members who choose Option 1 already can designate an estate to receive the balance of contributions.
2	31525	Board of Supervisor approval of Board of Retirement regulations	This amendment would delete the requirement that Board of Retirement regulations must be approved by the Board of Supervisors. This language is a holdover from when CERL systems were managed by a county department, and was adopted prior to the passage on Prop.162 in 1992. Adoption of regulations is part of the BOR's duty to administer the system.
3	31641.4	Prior Service -- Military Reserve Service	This amendment would note a potential federal pre-emption issue regarding purchasing prior military reserve service. Current statute establishes that prior service purchases from another public agency must not yield a pension from that agency. However, 10 U.S.C. § 12736 provides that a period of military service may not be excluded from credit towards a civilian employment pension just because that period also counts towards reservist retirement. Thus, the question arises which statute prevails in a conflict between 10 U.S.C. § 12736 and Section 31641.4. The Ninth Circuit Court of Appeal considered that question in Cantwell v. San Mateo County, 631 F.2d 631 (9th Cir. 1980), and determined that federal law overrides Section 31641.4.
4	31646	Service Purchase for FMLA Leave	This amendment would include all leaves that are covered under the FMLA that are not due to the illness of the member.
5	31646.XX	Furloughs	This amendment would provide boards with authority to prevent temporary mandatory furloughs from impacting member benefits under specified circumstances. Similar to CalPERS statutes (see GC 20968, 20969, 20969.1, 20969.2), but granting more discretion to boards, this proposed new code section may help avoid inequities that can arise because of the timing of temporary mandatory furloughs in relation to members' planned retirements.

As of September 2021

6	31680.2	Post-Retirement Employment	This amendment would add clarifying language that nonsalaried positions and per diems do not count as double dipping for members appointed to boards and commissions under purview of a participating employer of a county system; similar to language of 7522.57 for state boards and commission.
7	31725.7 31760	Disability Retirement: Optional Allowances	This amendment would allow members to change optional allowance if subsequently granted disability retirement, regardless of when the member filed a Disability Retirement application. Currently, Section 31725.7 only allows a benefit option change for members who retired for service after filing a disability retirement application but does not provide the same ability for those who retired for service before filing an application, even though both members may subsequently be granted a disability retirement.
8	31726 31726.5	Nonservice-connected disability	This amendment restructures the sections to provide more clarity; no substantive changes. The sections on the nonservice-connected disability retirement benefit formula distinguish between those retiring on or after age 65 for general and on or after age 55 for safety versus those retiring under these ages in the same section: 31726 and 31726.5.
9	31730	Disability -- Reinstatement	This amendment addresses the scenario in which an employer does not offer to take the employee back who has been found to no longer be incapacitated. The proposed amendment would convert convert the disability retirement into service retirement without adjusting benefit (i.e. actuarial reduction). This conforms to existing practice of several systems. Note: Similar to GC 21193 in which CalPERS only reinstates if the local employer offers to take the employee back.
10	31761 31762 31763 31764	Beneficiary Designation	This amendment would insert the word "natural" in front of the phrase "person having an insurable interest in his or her life" to clarify that the optional retirement settlement death benefit cannot be paid to a fictitious person such as a trust or corporation.

As of September 2021

11	31781	Lump Sum Death Benefit	This amendment would add language consistent with other CERL sections that provide direction on the calculation of compensation earnable and pensionable compensation when the member is on a leave of absence during the 12 months immediately preceding the member's death.
12	31838.5	Concurrent Retirement: Disability	Section 31838.5 prevents windfalls for members who retire for disability from one or more systems. This amendment would clarify that a CERL system must reduce a member's allowance from that system as much as necessary so that the member does not receive a combined allowance that is "greater than the amount the member would have received had all the member's service been with only one entity." The statute currently refers to a pro rata reduction by each system, but some systems (like CalPERS) are not subject to section 31838.5 and do not make any reduction. This may leave the member with the windfall that section 31838.5 is designed to prevent, depending upon how a system calculates its "pro rata" reduction. This statute would make clear that the windfalls section 31838.5 is designed to prevent should always be prevented.

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*Issue 1: 31452.7 – Beneficiaries Designating Estate*

*This amendment would allow a member to designate a corporation, trust, or estate to receive his or her last check upon death. This does not allow an estate or trust to receive ongoing payments. Note: Members who choose Option 1 already can designate an estate to receive the balance of contributions.*

Section 31452.7 of the Government Code is amended to read:

- (a) Upon the death of any member after retirement, any retirement allowance earned but not yet paid to the member shall, notwithstanding any other provision of law, be paid to the member's designated beneficiary.
- (b) Upon the death of any person receiving a survivor's allowance under this chapter, any allowance earned but not yet paid to the survivor shall, notwithstanding any other provision of law, be paid to the survivor's designated beneficiary.
- (c) **For purposes of this section, "beneficiary" includes, but is not limited to, a corporation, a trust, or an estate.**

*Issue 2: 31525 – BOR Regulations*

*This amendment would delete the requirement that Board of Retirement regulations must be approved by the Board of Supervisors. This language is a holdover from when CERL systems were managed by a county department, and was adopted prior to the passage on Prop.162 in 1992. Adoption of regulations is part of the BOR's duty to administer the system.*

Section 31525 of the Government Code is amended to read:

The board may make regulations not inconsistent with this chapter, **the Public Employees' Pension Reform Act of 2013, The California Pension Protection Act of 1992, and any other provisions of law applicable to county retirement systems.**  
~~The regulations become effective when approved by the board of supervisors.~~

*Issue 3: 31641.4 -- Prior Military Reserve Service*

*This amendment would note a potential federal pre-emption issue regarding purchasing prior military reserve service. Current statute establishes that prior service purchases from another public agency must not yield a pension from that agency. However, 10 U.S.C. § 12736 provides that a period of military service may not be excluded from*

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*credit towards a civilian employment pension just because that period also counts towards reservist retirement. Thus, the question arises which statute prevails in a conflict between 10 U.S.C. § 12736 and Section 31641.4. The Ninth Circuit Court of Appeal considered that question in *Cantwell v. San Mateo County*, 631 F.2d 631 (9th Cir. 1980), and determined that federal law overrides Section 31641.4.*

Section 31641.4 of the Government Code is amended to read:

A member shall receive credit for employment in public service only for such service as he is not entitled to receive a pension or retirement allowance from such public agency. The service for which he elects to contribute and the fact that no pension or retirement allowance will accrue to such member by virtue of his employment in such public agency must be certified to by an officer of the public agency where he rendered such public service or must be established to the satisfaction of the board. **Nothing in this paragraph prohibits a member from receiving credit for a period of federal public service where federal law expressly permits such credit even though the member is already entitled to receive a pension or retirement allowance from that service (*Cantwell v. San Mateo County*, 631 F.2d 631 (9th Cir. 1980)).**

*Issue 4: 31646 – Credit for Uncompensated Leave of Absence for Illness; Parental Leave; Conditions*

*This amendment would include all leaves that are covered under the FMLA that are not due to the illness of the member.*

Section 31646 of the Government Code is amended to read:

(a) A member who returns to active service following an uncompensated leave of absence on account of illness may receive service credit for the period of the absence upon the payment of the contributions that the member would have paid during that period, together with the interest that the contributions would have earned had they been on deposit, if the member was not absent. The contributions may be paid in a lump sum or may be paid on a monthly basis for a period of not more than the length of the period for which service credit is claimed. Credit shall not be received for any period of such an absence in excess of 12 consecutive months.

(b) (1) A member who returns to active service following an uncompensated leave of absence on account of parental leave may receive service credit for the period of the absence upon the payment of the contributions that the member and the employer would have paid during that period, together with the interest that the contributions would have earned had they been on deposit, if the member was not absent. For purposes of this subdivision, parental leave is defined as any time, up to one year,

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during which a member is granted an approved maternity or paternity leave and returns to employment at the end of the approved leave for a period of time at least equal to that leave. The contributions may be paid in a lump sum or may be paid on a monthly basis for a period of not more than the length of the period for which service credit is claimed. Credit shall not be received for any period of such an absence in excess of 12 consecutive months.

(2) This subdivision shall not be operative until the board of supervisors, by resolution adopted by majority vote, makes the provisions applicable to that county and applies it to parental leave that commences after the adoption by the board of supervisors.

**(c) (1) A member who returns to active service following an uncompensated leave of absence on account of the serious illness of a family member when the absence is eligible for coverage under the Family Medical Leave Act, 29 U.S.C. section 2601 et. seq., or the California Family Rights Act, Government Code section 12945 et. seq., may receive service credit for the period of the absence upon the payment of the contributions that the member and the employer would have paid during that period, together with the interest that the contributions would have earned had they been on deposit, if the member was not absent. For purposes of this subdivision, leave on account of illness of a family member is defined as any time, up to one year, during which a member is granted an approved leave to care for a seriously ill family member and returns to employment at the end of the approved leave for a period of time at least equal to that leave. The contributions may be paid in a lump sum or may be paid on a monthly basis for a period of not more than the length of the period for which service credit is claimed. Credit shall not be received for any period of such an absence in excess of 12 consecutive months.**

**(2) This subdivision shall not be operative until the board of supervisors, by resolution adopted by majority vote, makes the provisions applicable to that county and applies it to leave that commences after the adoption by the board of supervisors.**

*Issue 5: 31646.XX – Furloughs*

*This amendment would provide boards with authority to prevent temporary mandatory furloughs from impacting member benefits under specified circumstances. Similar to CalPERS statutes (see GC 20968, 20969, 20969.1, 20969.2), but granting more discretion to boards, this proposed new code section may help avoid inequities that can arise because of the timing of temporary mandatory furloughs in relation to members' planned retirements.*

Section 31646.XX of the Government Code is added to read:



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**The board may grant members who are subject to a temporary mandatory furlough the same service credit and “compensation earnable” or “pensionable compensation” to which the members would have been entitled in the absence of the temporary mandatory furlough. The board may condition such grant on the receipt of additional member and/or employer contributions that the board determines are necessary to fund any benefits granted under this section on an actuarially sound basis.**

**For the purposes of this section, a “temporary mandatory furlough” refers to time during which a member is directed to be absent from work without pay for up to one quarter of the member’s normal working hours, with such reduced working hours in place for no longer than two years.**

*Issue 6: 31680.20 – Postretirement Employment*

*This amendment would add clarifying language that nonsalaried positions and per diems do not count as double dipping for members appointed to boards and commissions under purview of a participating employer of a county system; similar to language of 7522.57 for state boards and commission.*

Section 31680.20 of the Government Code is added to read:

**A person who is retired under this chapter may serve without reinstatement from retirement or loss or interruption of benefits under this chapter or the Public Employees’ Pension Reform Act of 2013 provided the service is on a part-time state, county, city, district, or other political subdivision board or commission. A retired person whose employment without reinstatement is authorized by this subdivision shall acquire no benefits, service credit, or retirement rights with respect to the employment. Part-time service is limited to less than 20 hours per week, and salary or stipend of the part-time service may not exceed \$60,000 annually.**

*Issue 7: 31725.7, 31760 – Disability Retirement: Optional Allowances*

*This amendment would allow members to change optional allowance if subsequently granted disability retirement, regardless of when the member filed a Disability Retirement application. Currently, Section 31725.7 only allows a benefit option change for members who retired for service after filing a disability retirement application but does not provide the same ability for those who retired for service before filing an application, even though both members may subsequently be granted a disability retirement.*

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Section 31725.7 of the Government Code is amended to read:

(a) At any time after filing an application for disability retirement with the board, the member may, if eligible, apply for, and the board in its discretion may grant, a service retirement allowance pending the determination of his or her entitlement to disability retirement. If he or she is found to be eligible for disability retirement, appropriate adjustments shall be made in his or her retirement allowance retroactive to the effective date of his or her disability retirement as provided in Section 31724.

**(b) Notwithstanding subdivision (a), this section shall also apply to a member retired for service who subsequently files an application for disability retirement with the board. If he or she is found to be eligible for disability retirement, appropriate adjustments shall be made in his or her retirement allowance retroactive to the effective date of his or her disability retirement as provided in Section 31724.**

~~(b)~~(c) This section shall not be construed to authorize a member to receive more than one type of retirement allowance for the same period of time nor to entitle any beneficiary to receive benefits which the beneficiary would not otherwise have been entitled to receive under the type of retirement which the member is finally determined to have been entitled. In the event a member retired for service is found not to be entitled to disability retirement he or she shall not be entitled to return to his or her job as provided in Section 31725.

~~(e)~~(d) If the retired member should die before a final determination is made concerning entitlement to disability retirement, the rights of the beneficiary shall be as selected by the member at the time of retirement for service. The optional or unmodified type of allowance selected by the member at the time of retirement for service shall also be binding as to the type of allowance the member receives if the member is awarded a disability retirement.

~~(d)~~(e) Notwithstanding subdivision ~~(e)~~(d), if the retired member should die before a final determination is made concerning entitlement to disability retirement, the rights of the beneficiary may be as selected by the member at the time of retirement for service, or as if the member had selected an unmodified allowance. The optional or unmodified type of allowance selected by the member at the time of retirement for service shall not be binding as to the type of allowance the member receives if the member is awarded a disability retirement. A change to the optional or unmodified type of allowance shall be made only at the time a member is awarded a disability retirement and the change shall be retroactive to the service retirement date and benefits previously paid shall be adjusted. If a change to the optional or unmodified type of allowance is not made, the benefit shall be adjusted to reflect the differences in retirement benefits previously received. This paragraph shall only apply to members who retire on or after January 1, 1999.

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Section 31760 of the Government Code is amended to read:

(a) Except as provided in subdivisions **(b) and (c)**, until the first payment of any retirement allowance is made, a member or retired member, in lieu of the retirement allowance for the member's life alone, may elect to have the actuarial equivalent of his or her retirement allowance as of the date of retirement applied to a lesser retirement allowance payable throughout life in accordance with one of the optional settlements specified in this article.

(b) Notwithstanding subdivision (a), a member who applies for disability and is subsequently granted a service retirement pending a determination of entitlement to disability may change the type of optional or unmodified allowance that he or she elected at the time the service retirement was granted, subject to the provisions of Section 31725.7.

**(c) Notwithstanding subdivision (a), a member retired for service who applies for and is subsequently granted a disability retirement may change the type of optional or unmodified allowance that he or she elected at the time the service retirement was granted, subject to the provisions of Section 31725.7.**

*Issue 8: Sections 31726 and 31726.5: Nonservice-connected disability*

*This amendment restructures the sections to provide more clarity; no substantive changes. The sections on the nonservice-connected disability retirement benefit formula distinguish between those retiring on or after age 65 for general and on or after age 55 for safety versus those retiring under these ages in the same section: 31726 and 31726.5.*

Section 31726 of the Government Code is amended to read:

(a) Upon retirement for ~~non-service~~**nonservice**-connected disability a member who has attained age 65 shall receive his or her service retirement allowance.

(b) Every member under age 65 who is retired for ~~non-service~~**nonservice**-connected disability and who is not simultaneously retired as a member on deferred retirement of the ~~State~~**Public** Employees' Retirement System or a retirement system established under this chapter in another county shall receive a disability retirement allowance which shall be the greater of the following:

~~(a)~~**(1)** The sum to which he or she would be entitled as service retirement; ~~or (b)~~**(2)**

A sum which shall consist of ~~any of the following~~:

~~(1)~~**(A)** An annuity which is the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement.

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~~(2)~~**(B)** If, in the opinion of the board, his or her disability is not due to intemperate use of alcoholic liquor or drugs, willful misconduct, or violation of law on his or her part, a disability retirement pension purchased by contributions of the county or district.

~~(3)~~**(C)** If, in the opinion of the board, his or her disability is not due to conviction of a felony or criminal activity which caused or resulted in the member's disability, a disability retirement pension purchased by contributions of the county or district. This paragraph shall only apply to a person who becomes a member of the system on or after January 1, 1988.

Section 31726.5 of the Government Code is amended to read:

**(a)** Upon retirement for nonservice-connected disability a safety member who has attained age 55 shall receive his or her service retirement allowance.

**(b)** Every safety member under age 55 who is retired for nonservice-connected disability and who is not simultaneously retired as a member on deferred retirement of the Public Employees' Retirement System or a retirement system established under this chapter in another county shall receive a disability retirement allowance which shall be the greater of:

~~(a)~~**(1)** The sum to which he or she would be entitled to as service retirement; or ~~(b)~~**(2)**

A sum which shall consist of:

~~(1)~~**(A)** An annuity which is the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement.

~~(2)~~**(B)** If, in the opinion of the board, his or her disability is not due to intemperate use of alcoholic liquor or drugs, willful misconduct, or violation of law on his or her part, a disability retirement pension purchased by contributions of the county or district.

~~(3)~~**(C)** If, in the opinion of the board, his or her disability is not due to conviction of a felony or criminal activity which caused or resulted in the member's disability, a disability retirement pension purchased by contributions of the county or district.

~~Paragraph 3~~**Subparagraph (C)** shall only apply to a person who becomes a member of the association on or after January 1, 1988.

*Issue 9: 31730 – Disability Reinstatement*

*This amendment addresses the scenario in which an employer does not offer to take the employee back who has been found to no longer be incapacitated. The proposed amendment would convert convert the disability retirement into service retirement without adjusting benefit (i.e. actuarial reduction). This conforms to existing practice of*

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*several systems. Note: Similar to GC 21193 in which CalPERS only reinstates if the local employer offers to take the employee back.*

Section 31730 of the Government Code is amended to read as follows:

- (a) If the board determines that the beneficiary is not incapacitated, and his or her employer offers to reinstate that beneficiary, his or her retirement allowance shall be canceled forthwith, and he or she shall be reinstated in the county service pursuant to the regulations of the county or district for reemployment of personnel.
- (b) If the board determines that the beneficiary is not incapacitated, and his or her employer does not offer to reinstate that beneficiary, notwithstanding any requirement of this chapter regarding eligibility therefor, his or her retirement allowance shall be reclassified to a service retirement in the same amount and subject to any applicable future cost of living adjustments. The optional or unmodified type of allowance selected by the beneficiary at the time of retirement for disability shall be binding as to the service retirement.**

*Issue 10: 31761, 31762, 31763, and 31764 – Optional Retirement Allowances:*

*This amendment would insert the word “natural” in front of the phrase “person having an insurable interest in his or her life” to clarify that the optional retirement settlement death benefit cannot be paid to a fictitious person such as a trust or corporation.*

Sections 31761, 31762, 31763, and 31764 of the Government Code are amended to read:

31761 – Optional settlement 1 consists of the right to elect in writing to have a retirement allowance paid him or her until his or her death and, if he or she dies before he or she receives in annuity payments the amount of his or her accumulated contributions at retirement, to have the balance at death paid to his or her estate or to the **natural** person, having an insurable interest in his or her life, as he or she nominates by written designation duly executed and filed with the board.

31762 – Optional settlement 2 consists of the right to elect in writing to have a retirement allowance paid to him or her until his or her death, and thereafter to the **natural** person, having an insurable interest in his or her life, as he or she nominates by written designation duly executed and filed with the board at the time of his or her retirement.

31763 – Optional settlement 3 consists of the right to elect in writing to have a retirement allowance paid him or her until his or her death, and thereafter to have one-half of his or her retirement allowance paid to the **natural** person, having an insurable interest in his

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or her life, as he or she nominates by written designation duly executed and filed with the board at the time of his or her retirement.

31764 – Optional settlement 4 consists of the right to elect in writing to have a retirement allowance paid him or her until his or her death and thereafter to have other benefits as are approved by the board, upon the advice of the actuary, continued throughout the life of and paid to the **natural** persons, having an insurable interest in his or her life, as he or she nominates by written designation duly executed and filed with the board at the time of his or her retirement. The designation shall not, in the opinion of the board and the actuary, place any additional burden upon the retirement system.

*Issue 11: 31781 – Death Benefit; Elements*

*This amendment would add language consistent with other CERL sections that provide direction on the calculation of compensation earnable and pensionable compensation when the member is on a leave of absence during the 12 months immediately preceding the member's death.*

Section 31781 of the Government Code is amended to read:

The death benefit shall consist of:

- (a) The member's accumulated contributions.
- (b) An amount, provided from contributions by the county or district, equal to one-twelfth of the annual compensation earnable or pensionable compensation as defined in [Section 7522.34](#), whichever is applicable, by the deceased during the 12 months immediately preceding his death, multiplied by the number of completed years of service under the system, but not to exceed 50 percent of such annual compensation. **The computation for any absence shall be based on the compensation of the position held by the member at the beginning of the absence.**

*Issue 12: 31838.5 – Concurrent Retirement; Disability*

*Section 31838.5 prevents windfalls for members who retire for disability from one or more systems. This amendment would clarify that a CERL system must reduce a member's allowance from that system as much as necessary so that the member does not receive a combined allowance that is "greater than the amount the member would have received had all the member's service been with only one entity." The statute currently refers to a pro rata reduction by each system, but some systems (like CalPERS) are not subject to section 31838.5 and do not make any reduction. This may leave the member with the windfall that section 31838.5 is designed to prevent, depending upon how a system*

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*calculates its “pro rata” reduction. This statute would make clear that the windfalls section 31838.5 is designed to prevent should always be prevented.*

Section 31838.5 of the Government Code is amended to read:

No provision of this chapter shall be construed to authorize any member, credited with service in more than one entity and who is eligible for a disability allowance, whether service connected or nonservice connected to receive an amount from one county that, when combined with any amount from other counties or the Public Employees' Retirement System, results in a disability allowance greater than the amount the member would have received had all the member's service been with only one entity.

In cases of service-connected disability allowances only, the limitation on disability allowances provided for in this section shall apply to service-connected disability allowances payable to those who, after being employed with another county or an entity within the Public Employees' Retirement System, become employed by a second public entity on or after January 1, 1984.

Each entity shall calculate its respective obligations based upon the member's service with that entity and each shall adjust its payment on a pro rata basis. **If, however, another entity does not reduce the amount it pays the member, an entity subject to this section shall reduce the allowance it pays the member by as much as necessary to ensure that the member does not receive a disability allowance greater than the amount the member would have received had all the member's service been with only one entity.**

**2022 TENTATIVE LEGISLATIVE CALENDAR**

COMPILED BY THE OFFICE OF THE ASSEMBLY CHIEF CLERK AND THE OFFICE OF THE SECRETARY OF THE SENATE  
Revised 10-21-21

**DEADLINES**

JANUARY							
	S	M	T	W	TH	F	S
Interim Recess							1
Wk. 1	2	3	4	5	6	7	8
Wk. 2	9	10	11	12	13	14	15
Wk. 3	16	17	18	19	20	21	22
Wk. 4	23	24	25	26	27	28	29
Wk. 1	30	31					

FEBRUARY							
	S	M	T	W	TH	F	S
Wk. 1			1	2	3	4	5
Wk. 2	6	7	8	9	10	11	12
Wk. 3	13	14	15	16	17	18	19
Wk. 4	20	21	22	23	24	25	26
Wk. 1	27	28					

MARCH							
	S	M	T	W	TH	F	S
Wk. 1			1	2	3	4	5
Wk. 2	6	7	8	9	10	11	12
Wk. 3	13	14	15	16	17	18	19
Wk. 4	20	21	22	23	24	25	26
Wk. 1	27	28	29	30	31		

APRIL							
	S	M	T	W	TH	F	S
Wk. 1						1	2
Wk. 2	3	4	5	6	7	8	9
Spring Recess	10	11	12	13	14	15	16
Wk. 3	17	18	19	20	21	22	23
Wk. 4	24	25	26	27	28	29	30

MAY							
	S	M	T	W	TH	F	S
Wk. 1	1	2	3	4	5	6	7
Wk. 2	8	9	10	11	12	13	14
Wk. 3	15	16	17	18	19	20	21
No Hrgs.	22	23	24	25	26	27	28
Wk. 4	29	30	31				

- Jan. 1** Statutes take effect (Art. IV, Sec. 8(c)).
- Jan. 3** Legislature reconvenes (J.R. 51(a)(4)).
- Jan. 10** Budget must be submitted by Governor (Art. IV, Sec. 12(a)).
- Jan. 14** Last day for **policy committees** to hear and report to **fiscal committees** fiscal bills introduced in their house in the odd-numbered year (J.R. 61(b)(1)).
- Jan. 17** Martin Luther King, Jr. Day.
- Jan. 21** Last day for any committee to hear and report to the **floor** bills introduced in that house in the odd-numbered year. (J.R. 61(b)(2)).  
Last day to submit **bill requests** to the Office of Legislative Counsel.
- Jan. 31** Last day for each house to pass bills introduced in that house in the odd-numbered year (J.R. 61(b)(3)) (Art. IV, Sec. 10(c)).

- Feb. 18** Last day for bills to be **introduced** (J.R. 61(b)(4), J.R. 54(a)).
- Feb. 21** Presidents' Day.

- Apr. 1** Cesar Chavez Day observed.
- Apr. 7** **Spring Recess** begins upon adjournment (J.R. 51(b)(1)).
- Apr. 18** Legislature reconvenes from Spring Recess (J.R. 51(b)(1)).
- Apr. 29** Last day for **policy committees** to hear and report to fiscal committees **fiscal bills** introduced in their house (J.R. 61(b)(5)).
- May 6** Last day for **policy committees** to hear and report to the floor **nonfiscal** bills introduced in their house (J.R. 61(b)(6)).
- May 13** Last day for **policy committees** to meet prior to May 31 (J.R. 61(b)(7)).
- May 20** Last day for **fiscal committees** to hear and report to the **floor** bills introduced in their house (J.R. 61 (b)(8)).  
Last day for **fiscal committees** to meet prior to May 31 (J.R. 61 (b)(9)).
- May 23 – 27** **Floor session only.** No committee may meet for any purpose except for Rules Committee, bills referred pursuant to Assembly Rule 77.2, and Conference Committees (J.R. 61(b)(10)).
- May 27** Last day for each house to pass bills introduced in that house (J.R. 61(b)(11)).
- May 30** Memorial Day.
- May 31** Committee meetings may resume (J.R. 61(b)(12)).

\*Holiday schedule subject to final approval by Rules Committee.



**2022 TENTATIVE LEGISLATIVE CALENDAR**COMPILED BY THE OFFICE OF THE ASSEMBLY CHIEF CLERK AND THE OFFICE OF THE SECRETARY OF THE SENATE  
Revised 10-21-21

JUNE							
	S	M	T	W	TH	F	S
Wk. 4				1	2	3	4
Wk. 1	5	6	7	8	9	10	11
Wk. 2	12	13	14	15	16	17	18
Wk. 3	19	20	21	22	23	24	25
Wk. 4	26	27	28	29	30		

**June 15** Budget Bill must be passed by midnight (Art. IV, Sec. 12(c)).**June 30** Last day for a legislative measure to qualify for the Nov. 8 General Election ballot (Elections Code Sec. 9040).

JULY							
	S	M	T	W	TH	F	S
Wk. 4						1	2
Summer Recess	3	4	5	6	7	8	9
Summer Recess	10	11	12	13	14	15	16
Summer Recess	17	18	19	20	21	22	23
Summer Recess	24	25	26	27	28	29	30
Wk. 1	31						

**July 1** Last day for **policy committees** to meet and report bills (J.R. 61(b)(14)).**Summer Recess** begins upon adjournment, provided Budget Bill has been passed (J.R. 51(b)(2)).**July 4** Independence Day.

AUGUST							
	S	M	T	W	TH	F	S
Wk. 1		1	2	3	4	5	6
Wk. 2	7	8	9	10	11	12	13
No Hrgs.	14	15	16	17	18	19	20
No Hrgs.	21	22	23	24	25	26	27
No Hrgs.	28	29	30	31			

**Aug. 1** Legislature reconvenes from **Summer Recess** (J.R. 51(b)(2)).**Aug. 12** Last day for **fiscal committees** to meet and report bills (J.R. 61(b)(15)).**Aug. 15 – 31 Floor session only.** No committee may meet for any purpose except Rules Committee, bills referred pursuant to Assembly Rule 77.2, and Conference Committees (J.R. 61(b)(16)).**Aug. 25** Last day to **amend** bills on the floor (J.R. 61(b)(17)).**Aug. 31** Last day for each house to pass bills (Art. IV, Sec 10(c), J.R. 61(b)(18)).**Final Recess** begins upon adjournment (J.R. 51(b)(3)).**IMPORTANT DATES OCCURRING DURING FINAL RECESS****2022**

Sept. 30 Last day for Governor to sign or veto bills passed by the Legislature before Sept. 1 and in the Governor's possession on or after Sept. 1 (Art. IV, Sec. 10(b)(2)).

Oct. 2 Bills enacted on or before this date take effect January 1, 2023. (Art. IV, Sec. 8(c)).

Nov. 8 General Election.

Nov. 30 Adjournment *sine die* at midnight (Art. IV, Sec. 3(a)).

Dec. 5 2023-24 Regular Session convenes for Organizational Session at 12 noon. (Art. IV, Sec. 3(a)).

**2023**

Jan. 1 Statutes take effect (Art. IV, Sec. 8(c)).

\*Holiday schedule subject to final approval by Rules Committee.



# Memorandum

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**DATE:** February 22, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Jeff Lamberson G.B.A., Director of Member Services  
**SUBJECT: OVERPAID AND UNDERPAID PLAN BENEFITS – 2021 REPORT**

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## Written Report

### Background/Discussion

In accordance with the Board of Retirement Overpaid and Underpaid Plan Benefits Policy adopted by the Board on May 16, 2016, this memorandum serves as the annual report covering the calendar year 2021. A majority of Overpaid Benefits each year come from late reporting of payee deaths. In order to combat this, OCERS Member Services Team made changes in 2021 to our death reporting processes to help quickly identify active payees that may have recently passed away. This change in our process should reduce the size of the overpayments related to late reporting of a payee’s death to the OCERS organization. We will continue to look for ways to reduce the occurrence of overpaid and underpaid benefits.


### Benefit Overpayments/Underpayments:

Benefit overpayments and repayments are tracked in the V3 pension software system. When an action that triggers an overpayment occurs, the system creates a transaction in the total amount and the reduction of the outstanding balance occurs as benefit deductions are applied or with the posting of check payments. The Benefit Recoupment report in V3 displays all overpayments created in the system, the current balance, and the last recoupment payment date and amount. By using this report, OCERS is able to monitor the status of overpayments, and to identify accounts that need additional action. Underpayments are less common, and those that occur, are paid to members in the form of one-time benefit adjustments upon discovery.

In 2021, among the over 19,000 monthly payees at OCERS, 138 benefit overpayments occurred. Of this number, we have fully recovered 84 overpayments, we have written off 22 overpayments as per the Board approved write off policy and there are 12 overpayment accounts in the active repayment process via monthly benefit deductions. Efforts seeking repayment arrangements are underway for the remaining 20 accounts (19 deceased payees and 1 active payee).

The most significant cause of benefit overpayments this year remains the late reporting of payee deaths at a little over 67%. Over 78% of those have been fully recouped. The remaining 33% of overpayments were a result of a variety of account activities: approved member appeals, updated payroll information received post retirement, team member error or other changes.

### Submitted by:

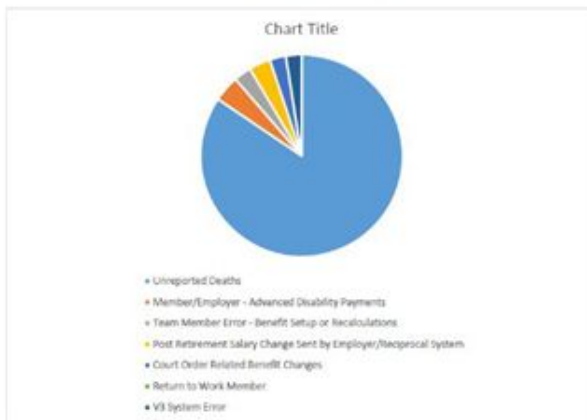
           J.L. Approved            
Jeff Lamberson G.B.A.  
Director, Member Services

OVERPAYMENT - 1/1/2021 TO 12/31/2021

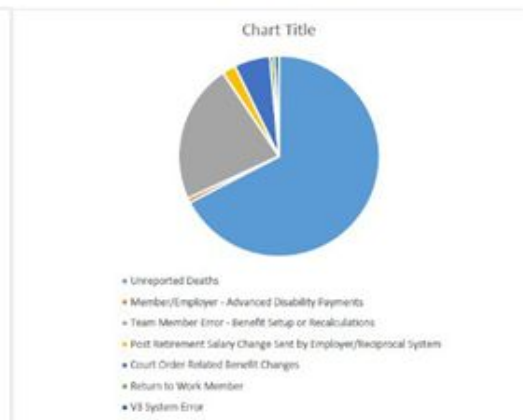
Overpayment Source	Original Overpayment Amount	Amount Recouped	Amount Still Owed	Payee Count	Paid in Full	Payment Plan Active	Collection Efforts Underway	*Write Off
Unreported Deaths	\$567,881.36	\$375,816.62	\$192,064.74	93	73	1	19	0
Member/Employer - Advanced Disability Payments	\$28,189.08	\$28,189.08	\$0.00	1	1	0	0	0
Team Member Error - Benefit Setup or Recalculations	\$18,698.40	\$16,397.66	\$2,300.74	31	7	1	1	22
Post Retirement Salary Change Sent by Employer/Reciprocal System	\$23,255.96	\$5,389.19	\$17,866.77	3	0	3	0	0
Court Order Related Benefit Changes	\$17,285.45	\$10,691.65	\$6,593.80	8	2	6	0	0
Return to Work Member	\$66.31	\$66.31	\$0.00	1	1	0	0	0
V3 System Error	\$16,884.75	\$4,748.85	\$12,135.90	1	0	1	0	0
<b>Totals</b>	<b>\$672,261.31</b>	<b>\$441,299.36</b>	<b>\$230,961.95</b>	<b>138</b>	<b>84</b>	<b>12</b>	<b>20</b>	<b>22</b>

\*Less than \$100 benefit overpayment, write off policy applied

Original Overpayment Amount



Payee Count by Source





## OCERS Board Policy

# Overpaid and Underpaid Plan Benefits Policy

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### Purpose and Background

1. The purpose of the Orange County Employees Retirement System (“OCERS,” “System,” or “Plan”) *Overpaid and Underpaid Plan Benefits Policy* (“policy”) is to provide a framework that the System can use as a basis for resolving erroneous payments of Plan benefits to members and their beneficiaries. In the event that an overpayment is the result of a felony conviction OCERS Administrative Procedure (OAP) *Felony Forfeitures* shall be used as a basis for resolution. The OCERS Board of Retirement (“Board”) is charged with the responsibility of administering the System in a manner that assures appropriate and prompt delivery of benefits and related services to members and their beneficiaries and of managing the assets in a prudent manner. The Internal Revenue Service (“IRS”) requires that operational failures be corrected in a prompt, reasonable, and consistent manner that attempts to place the retirement system in the position it would have been in had the erroneous payment not occurred.

### Policy Objectives

2. Members and their beneficiaries (herein referred to as “members”) have a right to accurate retirement benefit payments. No member has the right to receive or retain retirement benefit payments that exceed the amounts to which a member is entitled, and no member may be deprived of any benefit payments that he or she is entitled to receive. Subject to all applicable laws and consistent with this policy and the procedures established by the Board, it shall be OCERS’ policy to make every reasonable effort to recover from a member the amount of any overpaid Plan benefits, and remit to a member the amount of any underpaid Plan benefits.

### Policy Guidelines

3. After discovery of overpaid or underpaid benefits, and within a reasonable period of time after written notification to the affected member, OCERS will correct the benefit payment amount prospectively to prevent additional overpayments or underpayments, and will pay to the member in a lump sum, or collect from the member through lump sum or installment payments, the amounts to which the member or the Plan is entitled in accordance with this policy and applicable law.
4. These policies and procedures are designed for use when calculation and other errors affect an individual member’s retirement benefits. In the event of a system-wide error that affects multiple members’ benefits, the Board may implement a system-wide correction process that it determines is appropriate under the circumstances.
5. In the event of any inconsistency between applicable law (including IRS rules and guidance) and these policies and procedures, the law shall govern.



## OCERS Board Policy

# Overpaid and Underpaid Plan Benefits Policy

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### Policy Procedures for Overpaid Benefits

6. When an overpayment of Plan benefits is discovered more than ninety (90) days after the member/payee's initial benefit payment, OCERS will first adjust the benefit payment prospectively to reflect the correct benefit amount and to prevent additional overpayments. OCERS will also take all reasonable steps to recover the full amount of all overpayments, going back to the inception of the error, and recouping "appropriate interest," as defined in section 7 below, during the period in which the benefit overpayments were made and also during any repayment period (*i.e.*, applied to the outstanding amount due until fully repaid).
7. *Appropriate Interest*
  - a. "*Appropriate interest*" means an interest amount determined using the System's actuarially assumed rate of return as of the date OCERS sets for commencing repayment.
  - b. In cases where there is evidence that the benefit overpayment resulted from fraud or dishonest conduct by the member/payee or because the member/payee provided, or caused to be provided, inaccurate information to OCERS or the member's employer, then "appropriate interest" shall be recouped from the member/payee.
  - c. In cases other than those described above in Section 7.b, "appropriate interest" shall be recouped from the member's employer.
8. The Board believes that considerations of cost effectiveness make it prudent and reasonable to pursue recovery of overpaid benefits only where the cumulative total amount of overpaid benefits is \$250 or more. Accordingly, OCERS is authorized to not seek recovery of any such overpaid benefits where the total amount overpaid to the member is less than \$250.
9. *Time Period for Installment Payments.* When recovering benefit overpayments, the following apply:
  - a. *Director of Member Services:* When the total amount of such overpaid benefits, not including interest, is \$10,000 or less, the Director of Member Services shall have authority to agree to extend the time period for the member's installment payments to a period not exceeding the expected lifetime of the member as determined by the actuary.
  - b. *CEO:* Regardless of the amount of the Plan's claim against the member, the CEO shall have the authority to agree to extend the time period for the member's installment payments to a period not exceeding the expected lifetime of the member as determined by the actuary.
10. *Compromising claims:* The amount of the Plan's claim for overpaid benefits is the difference between the amounts actually paid to the member during the overpayment period and the amounts that should have been paid, together with "appropriate interest" from the dates of the actual overpayments to the date(s) the correction is effective. The likelihood of collection, the cost of collection, the amount of possible recovery and extreme hardship to the member will be considered by the CEO and/or the Board when determining whether to compromise a claim. Compromising a claim may include a different method of repayment than is otherwise provided



## OCERS Board Policy

# Overpaid and Underpaid Plan Benefits Policy

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by this Policy and/or forgiveness or partial forgiveness of principal and/or interest, subject to applicable IRS rules and guidance.

- a. When the total amount of the Plan's claim against the member, not including interest, is \$1,000 or less, the CEO, on the advice of legal counsel, shall have the authority to compromise the claim.
- b. Only the Board may compromise claims in which the total amount of such overpaid benefits, not including interest, is greater than \$1,000.

11. The Board adopts the following procedures for accomplishing the recovery of overpaid Plan benefits:

- a. Upon discovery of the benefit overpayment, OCERS will send a letter by certified mail, return receipt requested, or by express delivery service, to the member/payee. Subject to the provisions of this Policy, the letter will provide the following information to the member/payee regarding the overpaid benefits:
  - i. Provide notice of the prospective adjustment to the benefit payment (to reflect the correct amount);
  - ii. Request payment to OCERS of the amount of overpaid benefits with appropriate interest as defined in section 7, above; and
  - iii. Unless otherwise determined by the Board, the CEO, or the Director of Member Services (see sections 9.a. and 9.b., above) or, if a repayment plan for a longer period is needed due to the limitation described in section 6, above, the letter will set a repayment plan with two options:
    - *Option 1* – equal installments deducted from the member/payee's monthly benefit over the same length of time that the overpaid benefits occurred, with "appropriate interest" (as that phrase is defined in section 7, above) applied during the repayment period; and
    - *Option 2* – lump sum payment to the Plan for the full amount overpaid, with "appropriate interest" (as that phrase is defined in section 7, above) applied during the overpayment period.
- b. Notwithstanding the above, any reduction in the member/payee's ongoing monthly benefit to recover overpayments will be limited to a maximum of 15% of the corrected gross monthly benefit unless the member/payee requests a higher reduction. The balance due will be paid over time, subject to this limitation.
- c. OCERS may pursue all legal remedies to collect such overpaid Plan benefits, including making a claim on an estate or trust. In addition, if the member dies before the full amount of principal and interest is paid, OCERS may recover the remaining principal and interest from any lump sum amount OCERS is obligated to pay to the member's estate or named beneficiaries of the member; provided, however, OCERS shall not seek to recover any such remaining amounts from any continuation payments made to a surviving spouse or an optional beneficiary of the member, unless an erroneous payment is made to the surviving spouse or optional beneficiary.



## OCERS Board Policy

# Overpaid and Underpaid Plan Benefits Policy

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- d. OCERS will maintain a permanent record of all amounts of such overpaid Plan benefits and the repayment to OCERS of those overpaid benefits. Every year, for cases involving benefit overpayments, the Director of Member Services shall provide a report to the Board.
- e. To the extent OCERS is unable to recoup overpaid Plan benefits from the member/payee, any shortfall will be recouped from the employer as part of the annual actuarial valuation process.

### Policy Procedures for Underpaid Benefits

12. When the Plan has underpaid benefits to the member, and the underpayment is discovered more than 90 days after the member/payee's initial benefit payment, the member shall be entitled to a prospective adjustment to his or her retirement benefits to reflect the correct benefit amount. In addition, except as provided in Section 14, below, the member will be entitled to a lump sum payment for all past amounts owed as a result of the error, with interest compounded annually at the rate of 3%. The payment shall be made as soon as administratively feasible.

13. If a member who was underpaid benefits has died prior to payment of the lump sum amount due, the payment, including interest, will be made according to OCERS' standard procedures for paying residual amounts following the death of the member (*e.g.*, to the designated beneficiary, estate, personal representative, trustee of the member trust, etc.).

- a. If, after following its standard procedures and applicable IRS guidance, Plan staff has not been able to locate a person entitled to payment, the Plan shall hold the funds on behalf of that person for five years. If the funds are not claimed within five years, the funds may be transferred into the System's pension reserve fund. If someone later appears to claim the funds, the Board or the CEO will consider such claims on a case-by-case basis.
- b. The Plan will maintain a permanent record of all amounts of outstanding refunds of underpaid benefits and any amounts that have been transferred into the pension reserve fund.

14. If the total amount that the Plan owes to the member, is \$75 or less, the Plan is not required to make the corrective distribution if, in the judgment of the CEO in consultation with legal counsel, the reasonable direct costs of processing and delivering the distribution to the member would exceed the amount of the distribution.

### Administrative Review

15. A member/payee may request administrative review of any decision regarding corrective actions that the Plan takes with respect to recovering and/or returning over and underpayments of plan benefits.

The review process will generally follow the same pattern as the review process for benefit determinations pursuant to the Board's Administrative Review and Hearings Policy.

- a. Overpayment collection efforts will be stayed, but benefits will be prospectively adjusted to prevent additional overpayments, during the pendency of the administrative review process; provided, however, that the Board shall have the discretion to suspend implementing its



## OCERS Board Policy Overpaid and Underpaid Plan Benefits Policy

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recovery from the member in whole or in part during any ensuing court action. Interest will continue to accrue on all amounts owed to OCERS during the administrative review process and litigation.

### Policy Review

16. The Board will review this policy at least every three (3) years to ensure that it remains relevant and appropriate.

### Policy History

17. This policy was adopted by the Board of Retirement on May 16, 2016 and amended on October 21, 2019 and November 15, 2021.

### Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

A handwritten signature in blue ink that reads "Steve Delaney".

Steve Delaney  
Secretary of the Board

11-15-2021

Date





## Memorandum

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**DATE:** February 22, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Suzanne Jenike, Assistant CEO, External Operations  
**SUBJECT:** **2022 STAR COLA COST POSTING**

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### Written Report

#### Background/Discussion

In accordance with Government Code section 7507, a public meeting will occur on March 21, 2022, to consider the STAR COLA ad hoc adjustment to applicable retirement allowances.

STAR COLA stands for Supplemental Targeted Adjustment for Retirees, Cost of Living Adjustment. The purpose is to restore purchasing power for retirees who have lost more than 20% of their purchasing power since retirement, as measured by the accumulation in a retired member's COLA bank. The STAR COLA brings those individuals back to 80% of purchasing power. It applies to those retirees or their beneficiaries who began receiving a benefit on or before April 1, 1980, and is granted in accordance with Government Code section 31874.3(c).

Before the Board votes on whether to grant the STAR COLA, the costs must be posted at a separate public meeting, in accordance with Government Code Section 7507. As such, this item is providing the required notice that on March 21, 2022, the Board will consider the granting of the STAR COLA. The total cost is projected to be \$351,903 and applies to 161 payees.

- County of Orange \$349,178 -158 payees
- UCI \$406 - 1 payee
- Sanitation District \$2,319 - 2 payees

As in the past, the Board will provide each employer with STAR COLA recipients the opportunity to pay their share of the cost in a lump sum, over a period of 12 months or add it to the unfunded liability for that employer.

#### Submitted by:



S. J. – APPROVED

Suzanne Jenike  
Assistant CEO, External Operations



Andy Yeung, ASA, MAAA, FCA, EA  
Vice President & Actuary  
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**Via Email**

February 3, 2022

Mr. Steve J. Delaney  
Chief Executive Officer  
Orange County Employees Retirement System  
2223 Wellington Avenue  
Santa Ana, CA 92701-3101

**Re: Orange County Employees Retirement System (OCERS)  
Supplemental Targeted Adjustment for Retirees Cost-of-Living Adjustment  
(STAR COLA) Payment Projections as of April 1, 2022**

Dear Steve:

As requested by the System, we have projected the cost of continuing the STAR COLA benefit over the next ten years from April 1, 2022.

**BACKGROUND**

The Retirement Board grants a STAR COLA benefit to maintain a minimum of 80% of a retiree's or beneficiary's purchasing power. The STAR COLA benefit is calculated by first taking the balance in a member's COLA bank that is in excess of 20% and multiplying that times the member's benefit.

The 1937 Act allows the Board either to advance fund the STAR COLA benefit subject to the availability of excess earnings above 1% of OCERS' assets or to grant this benefit on an annual basis. We understand that the Board's current policy is to grant this benefit on an annual basis.

**RESULTS AND ANALYSIS**

On April 1, 2022, only those members who retired on or before April 1, 1980 have COLA banks in excess of 20% and hence are eligible to receive the STAR COLA.

The attached Exhibit A shows a ten-year projection of the STAR COLA benefits, expressed as a percentage of the benefit payable effective April 1 of the next ten years. In Exhibit B, we show the annual benefit payment based on who is eligible for the STAR COLA benefit as of April 1, 2022 (i.e., members who retired on or before April 1, 1980) and those who may become eligible after April 1, 2022. In Exhibit C, we have included a schedule that provides the breakdown of the anticipated STAR COLA benefits from April 1, 2022 to March 31, 2023 based on members who retired from each employer.

Mr. Steve J. Delaney  
 February 3, 2022  
 Page 2

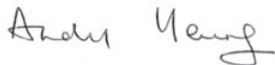
Our projections are based on the following assumptions provided below.

1. The existing 80% purchasing power cap will remain unchanged.
2. In adjusting the purchasing power banks after April 1, 2022, we have used the assumed retiree COLA assumption of 2.75% previously adopted by the Board for the upcoming December 31, 2021 valuation. As OCERS provides a maximum annual COLA of 3.0%, the COLA banks will decrease in the future under the 2.75%<sup>1</sup> retiree COLA assumption (see attached Exhibit A) and thus no other additional members will be expected to become eligible.<sup>2</sup> We assume that future STAR COLA benefits, adjusted to reflect inflation for the prior calendar year, will be paid commencing April 1 of the subsequent year.
3. Our projections were based on the latest membership data used in the valuation as of December 31, 2020, but updated through mid-January 2022 to exclude those members who have passed away since the prior valuation. For conservatism, we assumed no deaths would have occurred among retirees and beneficiaries from mid-January 2022 to April 1, 2022. Effective April 1, 2022, we applied the life expectancies previously adopted by the Board for the upcoming December 31, 2021 valuation in projecting members who will be entitled to payments in the ten-year period.
4. The projections are based on proprietary actuarial modeling software. Our Actuarial Technology and Systems unit, comprised of both actuaries and programmers, is responsible for the initial development and maintenance of these models. The models have a modular structure that allows for a high degree of accuracy, flexibility and user control. The client team programs the assumptions and the plan provisions, validates the models, and reviews test lives and results, under the supervision of the responsible actuary.

I'm a member of the American Academy of Actuaries and I meet the Qualification Standard of the American Academy of Actuaries to render the actuarial opinion herein.

Please give us a call if you have any questions.

Sincerely,



Andy Yeung, ASA, MAAA, FCA, EA  
 Vice President & Actuary

JY/bbf

Enclosures

cc: Suzanne Jenike  
 Brenda Shott

<sup>1</sup> It should be noted that 2.75% is assumed to be the average annual COLA during the next ten years. In practice, actual COLAs are granted annually in increments of 0.5% according to the 1937 Act.

<sup>2</sup> It should be noted that in determining the liabilities for those retirees with COLA banks in the funding valuation, we have been assuming that a COLA of 3.00% would be paid on each April 1 following the date of the valuation until their COLA banks are depleted.

*Exhibit A***Ten-Year Projection of STAR COLA Benefits**

(Expressed as a Percent of the Benefit Payable Effective April 1 of the Year Indicated)

<b>Date of Retirement</b>	<b>April 1, 2022</b>	<b>April 1, 2023</b>	<b>April 1, 2024</b>	<b>April 1, 2025</b>	<b>April 1, 2026</b>	<b>April 1, 2027</b>	<b>April 1, 2028</b>	<b>April 1, 2029</b>	<b>April 1, 2030</b>	<b>April 1, 2031</b>
On or Before 04/01/1972	27.50%	27.25%	27.00%	26.75%	26.50%	26.25%	26.00%	25.75%	25.50%	25.25%
04/02/1972 to 04/01/1974	27.00%	26.75%	26.50%	26.25%	26.00%	25.75%	25.50%	25.25%	25.00%	24.75%
04/02/1974 to 04/01/1975	26.50%	26.25%	26.00%	25.75%	25.50%	25.25%	25.00%	24.75%	24.50%	24.25%
04/02/1975 to 04/01/1976	21.00%	20.75%	20.50%	20.25%	20.00%	19.75%	19.50%	19.25%	19.00%	18.75%
04/02/1976 to 04/01/1977	15.50%	15.25%	15.00%	14.75%	14.50%	14.25%	14.00%	13.75%	13.50%	13.25%
04/02/1977 to 04/01/1978	12.00%	11.75%	11.50%	11.25%	11.00%	10.75%	10.50%	10.25%	10.00%	9.75%
04/02/1978 to 04/01/1979	8.00%	7.75%	7.50%	7.25%	7.00%	6.75%	6.50%	6.25%	6.00%	5.75%
04/02/1979 to 04/01/1980	3.00%	2.75%	2.50%	2.25%	2.00%	1.75%	1.50%	1.25%	1.00%	0.75%

*Exhibit B***PROJECTED BENEFIT PAYMENTS**

The expected benefit payments for the current and new STAR COLA recipients for the next ten years, commencing April 1, 2022, are provided in the following table:

	Benefit Payments		
	(1) Eligible for STAR COLA as of April 1, 2022	(2) Not Yet Eligible for STAR COLA as of April 1, 2022	(1) + (2)
1. April 1, 2022 - March 31, 2023	\$351,903	\$0	\$351,903
2. April 1, 2023 - March 31, 2024	320,965	0	320,965
3. April 1, 2024 - March 31, 2025	290,734	0	290,734
4. April 1, 2025 - March 31, 2026	262,066	0	262,066
5. April 1, 2026 - March 31, 2027	235,392	0	235,392
6. April 1, 2027 - March 31, 2028	210,865	0	210,865
7. April 1, 2028 - March 31, 2029	188,475	0	188,475
8. April 1, 2029 - March 31, 2030	168,109	0	168,109
9. April 1, 2030 - March 31, 2031	149,612	0	149,612
10. April 1, 2031 - March 31, 2032	<u>132,815</u>	<u>0</u>	<u>132,815</u>
Total Benefit Payments	\$2,310,936	\$0	\$2,310,936
Discounted Benefit Payments <sup>(1)</sup>	\$1,777,056	\$0	\$1,777,056

<sup>(1)</sup> At 7.00% annual investment return assumption.

*Exhibit C***PROJECTED BENEFIT PAYMENTS BY EMPLOYER**

The expected benefit payments for the current STAR COLA recipients from April 1, 2022 to March 31, 2023 broken down by employer, are provided in the following table:

	Benefit Payments			
	Orange County	U.C.I. (Bi-weekly)	Sanitation District	Total
April 1, 2022 - March 31, 2023	\$349,178	\$406	\$2,319	\$351,903

**§31874.3. Determination; application of excess to allowances; effect on subsequent increases**

(a)(1) Whenever the percentage of annual increase in the cost of living as of January 1 of each year as shown by the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers exceeds the maximum benefit increase provided in Section 31870, 31870.1, 31870.2, or 31870.3, whichever is applicable, the board of retirement may provide that all or part of the excess percentage increase shall be applied to the retirement allowances, optional death allowances, or annual death allowances increased in Section 31870, 31870.1, 31870.2, or 31870.3. The board shall determine the amount of the excess to be applied, which amount shall not exceed an amount that can be paid from earnings of the retirement fund that are in excess of the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund.

(2) The supplemental increases in excess of the increases applied to the retirement allowances, optional death allowances, or annual death allowances pursuant to Section 31870, 31870.1, 31870.2, or 31870.3 shall not become a part of the retirement allowances, optional death allowances, or annual death allowances to be increased by subsequent increases under Section 31870, 31870.1, 31870.2, or 31870.3.

(3) This subdivision shall be operative in any county that has elected by a majority vote of the board of supervisors to make either Section 31870, 31870.1, 31870.2, or 31870.3 applicable in that county.

(b)(1) The board of retirement may, instead of taking action pursuant to subdivision

(a), provide supplemental cost-of-living increases, effective on a date to be determined by the board, to the retirement allowances, optional death allowances, or annual death allowances increased in Section 31870, 31870.1, 31870.2, or 31870.3; provided however, that only those members shall be eligible for this increase whose accumulations established by Section 31870, 31870.1, 31870.2, or 31870.3 shall equal or exceed 20 percent as of January 1 of the year in which the board of retirement adopts an increase under this subdivision.

(2) The supplemental increases to the retirement allowances, optional death allowances or annual death allowances increased in Section 31870, 31870.1, 31870.2, or 31870.3 shall not become a part of the retirement allowances, optional death allowances or annual death allowances to be increased by subsequent increases under Section 31870, 31870.1, 31870.2, or 31870.3.

(3) This subdivision shall be operative in any county that has elected by a majority vote of the board of supervisors to make either Section 31870, 31870.1, 31870.2, or 31870.3 applicable in that county.

(c)(1) The board of retirement may, instead of taking action pursuant to subdivision (a) or (b), provide supplemental cost-of-living increases, on a prefunded basis and effective on a date to be determined by the board, to the retirement allowances, optional death allowances, or annual death allowances increased in Section 31870, 31870.1, 31870.2, or 31870.3; provided however, only those members shall be eligible for this increase whose accumulations established by Section 31870, 31870.1, 31870.2, or 31870.3 equal or exceed 20 percent as of January 1 of the year in which the board of retirement takes action pursuant to this subdivision.

(2) The supplemental increases to the retirement allowances, optional death allowances, or annual death allowances increased in Section 31870, 31870.1, 31870.2, or 31870.3 shall become a part of the retirement allowances, optional death allowances, or annual death allowances and shall serve to reduce the accumulations established by Section 31870, 31870.1, 31870.2, or 31870.3, as applicable, by the same percentage as the payment that is made pursuant to this Section.

(3) Before the board of retirement provides benefits pursuant to this subdivision, the costs of the benefits shall be determined by a qualified actuary and the board of retirement shall, with the advice of the actuary, provide for the full funding of the benefits utilizing funds in the reserve against deficiencies established pursuant to Section 31592.2, using surplus earnings that exceed 1 percent of the total assets of the retirement system.

(4) This subdivision shall be operative in any county that has elected by a majority vote of the board of supervisors to make either Section 31870, 31870.1, 31870.2, or 31870.3 applicable in that county.

(d) Upon adoption by any county providing benefits pursuant to this section, of Article 5.5 commencing with Section 31610) of this chapter, the board of retirement shall, instead, pay those benefits from the Supplemental Retiree Benefit Reserve established pursuant to Section 31618.

(Amended (as amended by Stats. 1983, Ch. 147, Sec. 2) by Stats. 1983, Ch. 886, Sec. 11)

(Amended by Stats. 2000, Ch. 317 (AB 2176), Sec. 4)



CA Govt Code § 7507 (2017)

(a) For the purpose of this section:

(1) "Actuary" means an actuary as defined in Section 7504.

(2) "Future annual costs" includes, but is not limited to, annual dollar changes, or the total dollar changes involved when available, as well as normal cost and any change in accrued liability.

(b) (1) Except as provided in paragraph (2), the Legislature and local legislative bodies, including community college district governing boards, when considering changes in retirement benefits or other postemployment benefits, shall secure the services of an actuary to provide a statement of the actuarial impact upon future annual costs, including normal cost and any additional accrued liability, before authorizing changes in public retirement plan benefits or other postemployment benefits.

(2) The requirements of this subdivision do not apply to:

(A) An annual increase in a premium that does not exceed 3 percent under a contract of insurance.

(B) A change in postemployment benefits, other than pension benefits, mandated by the state or federal government or made by an insurance carrier in connection with the renewal of a contract of insurance.

(c) (1) (A) With regard to local legislative bodies, including community college district governing boards, the future costs of changes in retirement benefits or other postemployment benefits, as determined by the actuary, shall be made public at a public meeting at least two weeks prior to the adoption of any changes in public retirement plan benefits or other postemployment benefits. If the future costs of the changes exceed one-half of 1 percent of the future annual costs, as defined in paragraph (2) of subdivision (a), of the existing benefits for the legislative body, an actuary shall be present to provide information as needed at the public meeting at which the adoption of a benefit change shall be considered. The adoption of any benefit to which this section applies shall not be placed on a consent calendar.

(B) The requirements of this paragraph do not apply to:

(i) An annual increase in a premium that does not exceed 3 percent under a contract of insurance.

(ii) A change in postemployment benefits, other than pension benefits, mandated by the state or federal government or made by an insurance carrier in connection with the renewal of a contract of insurance.

(2) With regard to the Legislature, the future costs as determined by the actuary shall be made public at the policy and fiscal committee hearings to consider the adoption of any changes in public retirement plan benefits or other postemployment benefits. The adoption of any benefit to which this section applies shall not be placed on a consent calendar.

(d) Upon the adoption of any benefit change to which this section applies, the person with the responsibilities of a chief executive officer in an entity providing the benefit, however that person is denominated, shall acknowledge in writing that he or she understands the current and future cost of the benefit as determined by the actuary. For the adoption of benefit changes by the state, this person shall be the Director of Human Resources.

(e) The requirements of this section do not apply to a school district or a county office of education, which shall instead comply with requirements regarding public notice of, and future cost determination for, benefit changes that have been enacted to regulate these entities. These requirements include, but are not limited to, those enacted by Chapter 1213 of the Statutes of 1991 and by Chapter 52 of the Statutes of 2004.

*(Amended by Stats. 2016, Ch. 415, Sec. 4. (AB 2375) Effective January 1, 2017.)*



## Memorandum

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DATE: February 22, 2022  
TO: Members of the Board of Retirement  
FROM: Steve Delaney, Chief Executive Officer  
SUBJECT: **2021 BUSINESS PLAN – END OF YEAR REPORT**

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### Written Report

#### Background/Discussion

Attached you will find the 2021 OCERS Business Plan, as approved by the OCERS Board in October 2020.

With 2021 now concluded, per the Board's reporting policy, the OCERS team has updated the business plan to show the status of each goal. The work accomplished in 2021 as well as those important objectives that may be ongoing are reflected in the red highlighted language that appears with each Plan Initiative, Objective and Goal.

#### Submitted by:



**SD - Approved**

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Steve Delaney  
Chief Executive Officer

Orange County Employees Retirement System  
2223 East Wellington Avenue | Santa Ana | 92701

# 2021 BUSINESS PLAN



# MISSION, VISION AND VALUES

## MISSION STATEMENT:

We provide secure retirement and disability benefits with the highest standards of excellence.

## VISION STATEMENT:

To be a trusted partner providing premier pension administration, distinguished by consistent, quality member experiences and prudent financial stewardship.

## VALUES:

- **O**pen and Transparent
- **C**ommitment to Superior Service
- **E**ngaged and Dedicated Workforce
- **R**eliable and Accurate
- **S**ecure and Sustainable

# 2021-2023 STRATEGIC GOALS

- Fund Sustainability
- Excellent Service and Support
- Risk Management
- Talent Management
- Effective Governance

# FUND SUSTAINABILITY

## **GOAL: STRENGTHEN THE LONG-TERM STABILITY OF THE PENSION FUND**

### ***Business Plan Initiatives***

Objective A: Mitigate the Risk of Significant Investment Loss

*Executive Lead – Molly Murphy*

1. Investment Consultant Contract Reviews – The IC approved extensions for all investment consultants through March 2022. The Investment Team launched an RFP for all consulting services in 2021 and will conclude the process in 2022.
2. Complete implementation of an investment/risk Caissa Management System – PROCESS CONTINUES INTO 2022

Objective B: Prudent Use and Security of Resources

*Executive Lead – Molly Murphy*

1. Investigate Custodial Bank Services options – RFP process to begin in 2022, with contract to be completed in 2023.

# EXCELLENT SERVICE AND SUPPORT

## **GOAL: ACHIEVE EXCELLENCE IN THE SERVICE AND SUPPORT WE PROVIDE TO OUR MEMBERS AND PLAN SPONSORS**

### *Business Plan Initiatives*

Objective A: Provide Accurate and Timely Benefits

*Executive Lead – Suzanne Jenike*

1. Streamline the retirement process by implementing:
  - a. LEAN action items – **IN PROCESS**
    - **Working in conjunction with LEAD Committee Process.**
    - **COMPLETED March 2021 - FAS Calculation Tool and redesign**
    - **COMPLETED September 2021 - FAS Calculation Tool (Macro incorporation)**
    - **COMPLETED November 2021 - Elimination of Manual Lump Sum Log in SharePoint**
  - b. Review and improve paper forms – **IN PROCESS**
    - **COMPLETED November 2021 - The following member forms have been updated on the OCERS website:**
      - **Tax Withholding Change Form**
      - **Member Direct Deposit Form**
      - **Beneficiary Change Form**
      - **Request to Defer Retirement Form**
      - **Member / Beneficiary Request To Withdraw Contributions / Elect Rollover Form**



- Additional forms in process.
  - c. Investigate options to initiate Disability applications online – DEFERRED. To be considered with planning of new/updated pension administration system.
2. Improve customer service standards by enhancing V3 workflows, monitoring and reporting (multi-year) – IN PROCESS
    - Working in conjunction with LEAN process improvements.
    - IN TESTING - Member Services Workflow Reporting Developed
    - UNDER DEVELOPMENT - Member Services Quality Assurance Reporting - Started in June 2021
  3. Investigate phone system options to improve service and reporting – IN PROCESS
    - COMPLETED – Optimized Phone Menu to service members better
    - COMPLETED – Improved monthly OCERS Activity Update reporting
    - COMPLETED - Enhanced phone reporting
    - Phone Queue Call Recording – To be implemented by February 28, 2022
  4. Investigate options on developing a Mobile App/Enhanced Self-Service Portal – DEFERRED. To be considered with planning of new/updated pension administration system.

Objective B: Provide Education to our Members and Employers

*Executive Lead – Suzanne Jenike*

1. Update annual employer workshop to virtual format – COMPLETED
2. Create videos and other online educational resources to enhance education to members and stakeholders about OCERS benefits, administrative operations and investments (multi-year) – IN PROCESS.
  - OCERS has posted several animated whiteboard videos (“On

The Move” and “How To Use OCERS’ Benefits Calculator”), a CIO Investment Portfolio Recap, as well as several video updates about OCERS’ operations during the pandemic. Additionally, the Communications Department worked with the Social Security Administration and the County of Orange Benefits Department to create full-length videos about their programs earlier this year that are posted on the OCERS website.

Objective C: Continuously Improve Business Processes and Procedures to be Efficient and Effective

*Executive Leads – Brenda Shott and Suzanne Jenike*

1. Explore the process of obtaining LEAN certifications  
– IN PROCESS
  - One team member registered and working on completing training. – Goal to complete by June 30, 2022.
  - Second team member to start later in 2022 depending on Alameda.
2. Identify additional business process to implement LEAN principles  
– IN PROCESS
  - Working in conjunction with LEAD committee process.
3. Implement new Enterprise Resource Planning (ERP) system  
– COMPLETED
  - System went live on January 3, 2022.
  - Next steps are to integrate an expense management software package and implement ACH payments for vendor invoices.
4. Migrate to Microsoft 365 infrastructure  
– COMPLETE
  - Microsoft 365 tenancy established, and Email and Devices being added in Q1 of 2022.

# RISK MANAGEMENT

## **GOAL: CULTIVATE A RISK-INTELLIGENT ORGANIZATION**

### *Business Plan Initiatives*

#### Objective A: Enhance Governance of Technology Risks

*Executive Leads – Brenda Shott, Matt Eakin & Jenny Sadoski*

1. Continue implementation plan for security and operational best practice controls (multi-year) – **ON-GOING and CONTINUOUS**
2. Develop and enhance information security policies – **IN PROCESS – Project has been started, expect completion in 2022**
3. Implement project management tools and best practices for use throughout the organization – **Not Started – Deferred to 2022 as part of New Helpdesk solution Business Initiative.**

#### Objective B: Continuously Assess Technology Environment and Address Risks

*Executive Leads – Brenda Shott, Matt Eakin & Jenny Sadoski*

1. Implement best practice security controls for Microsoft 365 – **IN PROCESS – Project has been started, expect completion in 2022**
2. Implement network access control to allow only authorized devices on the internal network – **DEFERRED – Will revisit the need for this project in future**

years

3. Implement network traffic analysis to observe internal network traffic and detect potential intrusions – **DEFERRED – Will revisit the need for this project in future years**
4. Implement network/server/service monitoring to detect and alert on operational status of systems – **PARTIALLY COMPLETE – Monitoring of external systems is complete, monitoring of internal systems planned for 2022**
5. Implement DNS security solution to protect computer endpoints – **DEFERRED – Project is planned for 2022**
6. Evaluate alternative methods of exchanging member identification protocols – **DEFERRED until 2023 but work continues to review and evaluate options**

Objective C: Ensure Compliance with Industry Frameworks and Best Practices

*Executive Leads – Brenda Shott, Matt Eakin & Jenny Sadoski*

1. Conduct a data classification study – **this project has not been started. Expect to begin in Q1 of 2022, with completion in 2022**
2. Implement automated inventories for tracking technology assets – **IN PROCESS – Project has been started, expect completion in 2022**

Objective D: Provide a Robust Business Continuity Solution

*Executive Leads – Brenda Shott, Matt Eakin & Jenny Sadoski*

1. Implement new backup solutions to enhance recovery of on premise and cloud systems **PARTIALLY COMPLETED – New enterprise backup solution procured and configured for Microsoft 365 backups. Additional backup configurations pending delivery and setup of new hardware – expected completion Q2 of 2022**
2. Implement infrastructure to allow employees to work a hybrid in office and remote environment **COMPLETED – Mobile devices issued to all staff in 2021**
3. Adopt policies to support a hybrid work environment – **COMPLETED**

Objective E: Ensure a Safe and Secure Workplace and Public Service Facility

*Executive Lead – Brenda Shott*

1. Investigate and evaluate long term options for OCERS headquarters – **IN PROCESS – staff is continuing to seek information on how the post pandemic office environment requirements and best practices might affect long term space needs**
2. Implement COVID-19 protocols and worksite plan – **COMPLETED – The COVID-19 prevention plan has been completed and is prepared for the team to return to the OCERS headquarters in March 2022**
3. Upgrade the Board Room audio/visual equipment – **IN PROCESS – Project is underway but delays in equipment delivery has resulted in the upgrades to be completed in 2022**

# TALENT MANAGEMENT

## **GOAL: RECRUIT, RETAIN AND INSPIRE A HIGH-PERFORMING WORKFORCE**

### ***Business Plan Initiatives***

Objective A: Recruit and Retain a Diverse High-Performing Workforce to Meet Organizational Priorities

*Executive Leads – Steve Delaney and Cynthia Hockless*

1. Review and implement necessary changes onboarding and transitioning of new hires into the organization during remote work conditions – **COMPLETED**
2. Expand advertising and outreach sources in order to continue to encourage diversity in recruitments (multi-year) – **COMPLETED**
3. Complete compensation study and implement recommendations as appropriate – **COMPLETED**  
**New Compensation structure approved by the OCERS Board at the June 21, 2021 Board Meeting**

Objective B: Develop and empower every member of the team

*Executive Lead – Steve Delaney*

1. Design and develop a comprehensive training program based on individual needs and career goals that embeds a talent management mindset and creates

succession plans across the agency – **IN PROCESS – OCERS University, a customized training module, is live in Eureka. Different levels accommodate team members new to OCERS and those looking to further their skillset. LOD is formulating a framework for OCERS with intuitive Career Mapping and Development plans.**

2. Develop a comprehensive standardized library of process and procedure manuals across the organization – **IN PROCESS. LEAD Committee presently working on standardized library. Senior Executive Team presently seeking project manager to guide LEAD committee. Process now seems additionally to include helping lay foundation for new/updated pension administration system.**

Objective C: Cultivate a Collaborative, Inclusive and Creative Culture

*Executive Lead – Steve Delaney*

1. Continue to implement strategies that promote an inclusive workplace – **ONGOING and CONTINUOUS**
  - a. **Diversity/equity/inclusion project with outside consultant presently underway.**

This includes organizational training session followed by a survey with aggregated data designed to develop Design Sprints that will be made up of OCERS team members to actively discuss best practices to promote this initiative.
  - b. **Weekly all OCERS Team ZOOM meetings implemented at start of pandemic**
  - c. **Annual one-on-one meetings with CEO and each individual team member now a permanent part of OCERS culture.**

# EFFECTIVE GOVERNANCE

## **GOAL: IMPROVE THE EFFECTIVENESS AND EFFICIENCY OF THE BOARD AND STAFF BY CLARIFYING ROLES AND RESPONSIBILITIES, IMPROVING OVERSIGHT, CLARIFYING ACCOUNTABILITY AND IMPROVING DECISION MAKING**

Objective A: Employ a Governance Structure that Supports a Dynamic System

*Executive Lead – Steve Delaney*

1. Explore methods of focusing Board and staff time and effort on activities that support or advance OCERS’ Strategic Goals – **COMPLETED – Improved opportunities for governance have been explored but professional pension guidance currently has limited providers. In 2022 this concept will continue as the disability process will be reviewed in light of other pension system approaches.**

Objective B: Improve the Governance and Management of OCERS’ Records (multi-year)

*Executive Lead – Gina Ratto*

**COMPLETED – The Board approved a new Records Management Policy and Program at the end of 2021. Implementation and compliance on going.**

1. Identify “best practices” in record retention
2. Develop and implement a records retention program that reflects best practices and identifies appropriate retention periods for each category of records



3. Establish storage protocols and automate destruction schedules for electronic mail
4. Establish an alternative “work space” and/or storage place for emails
5. Systematically bring each department within OCERS into compliance with the records retention program
6. Establish procedures to maintain and audit compliance with the record retention program



ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM  
[www.ocers.org](http://www.ocers.org)



## Memorandum

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**DATE:** February 22, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Jim Doezie, Contracts, Risk and Performance Administrator  
**SUBJECT:** ANNUAL REPORT OF CONTRACTS GREATER THAN \$100,000

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### Written Report

#### Background/Discussion

The Procurement & Contracting Policy (Section 1.C.4.xii) specifies that all contracts exceeding a value of \$100,000 will be reported to the Board annually.

*"Report to the Board annually all contracts that exceed a Contract Value of \$100,000."*

The attached schedule includes a list of active contracts with an annual value greater than \$100,000 compared to the total amount incurred for each contract in 2021. In some circumstances, the spend amount is not a contracted value but rather the general terms and conditions are in place with the amounts based on Time and Materials ("T&M"). In these cases, the Procurement & Contracting Policy limits the spend amount to the approved budgeted amount.

#### Submitted by:



**JD - Approved**

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Jim Doezie  
Contracts, Risk and Performance Administrator

02-22-2022 REGULAR BOARD MEETING - R-10 Annual Report of Contracts Greater Than \$100000 -2021

**Orange County Employee Retirement System**  
**Vendors Contracts Valued at more than \$100,000**  
**For the Year Ended December 31, 2021**

Vendors Name	Description	Contract Value for 2021	Amount Expensed in 2021	Difference between 2021 Contract Value and 2020 Expense	Contract Effective Date	Contract Expiration Date	Comments
AFFIRMA CONSULTING LLC	Microsoft 365 implementation services	125,815	106,459	19,356	7/1/2021	12/31/2021	
AKSIA TORREYCOVE CAPITAL PARTNERS LLC	Private equity and private real assets consulting services. Named Service Provider	854,794	854,794	-	4/1/2018	4/1/2022	Contract price is adjusted annually by CPI as recorded in April.
AKSIA TORREYCOVE CAPITAL PARTNERS LLC	Co-Investments due diligence	\$34,500 per co-investment report	172,500	N/A	4/1/2018	4/1/2022	Co-investment pricing covered under the Special Projects provision in the consulting services contract above at a agreed upon price as of July 1, 2021 of \$34,500 per report.
ALLIANT INSURANCE SERVICES, INC.	Insurance services broker	Insurance Premiums	155,987	N/A	7/18/2016	7/19/2022	Not a set contract value. Fees paid by OCERS are for insurance premiums related to coverage for property, liability, fiduciary and crime. Compensation to the broker for placement of insurance is paid by the carrier and based on negotiated fees between the broker and the carrier. Total annual cost for coverage is limited by approved budget.
BACKSTOP SOLUTIONS GROUP, LLC	Contact Relationship Management (CRM) solution for investments.	105,865	112,335	(6,470)	12/22/2017	12/29/2023	Master Agreement is multi-year. Annual Ordering agreement with a renewal term of three years beginning 12/29/2020. Subscription, Maintenance and Support Agreement is \$103,165 per year based on 9 users, and can increase by 4% in second year and 3% in third year. One time professional services fee agreement for implementation of \$2,700. Overage of \$6,470 due to prorated fee for additional user added in March 2021.
CDW GOVERNMENT, INC.	Contracted Supplier for hardware and software	198,500	178,655	19,845	N/A	N/A	Total annual costs are limited by approved budget for equipment software and maintenance support.
FOLEY & LARDNER	Legal (investment) counsel services	600,000	172,087	427,913	7/1/2018	6/30/2024	Contract based on time and material. Total annual costs are limited by approved budget.
GARTNER INC.	I.T. Security and Technology advisory consultants and research firm	195,875	195,875	-	7/1/2021	6/30/2022	
JIGSAW SOFTWARE, INC.	I.T. programming consultant	172,800	103,342	69,458	1/1/2020	12/10/2021	Multiple contracts that overlap years. Amounts shown are for 2021 SOW's
K&L GATES LLP	Legal (investment) counsel services	600,000	109,083	490,917	9/1/2020	9/30/2023	Contract based on time and material. Total annual costs are limited by approved budget.
MACIAS GINI & O'CONNELL LLP	External Auditor. Named service provider	128,011	128,011	-	2/19/2016	12/31/2021	
MEKETA INVESTMENT GROUP, INC	Investment Consultant Services. Named service provider	844,905	844,905	-	6/1/2019	3/31/2022	
Metallic CommVault	Cloud based backup software for MS-365 support	126,068	-	126,068	12/1/2021	12/1/2024	Contract executed December 2021. No invoices received in 2021
NATIONAL DISABILITY EVALUATIONS INC	Medical examiner organization	275,000	405,525	(130,525)	2/14/2019	12/31/2021	Contract based on time and material. Total annual costs are limited by approved budget. Budget overage of \$130,525 was absorbed by other categories in services and supplies.
NOSSAMAN LLP	Legal (investment) counsel services	600,000	143,769	456,231	7/1/2018	6/30/2024	Contract based on time and material. Total annual costs are limited by approved budget.
ORANGE COUNTY TREASURER	Access to County VPN and reimbursement of election costs.	MOU	176,131	N/A	7/17/1995	N/A	MOU for services provided by County for OCERS employees.
REED SMITH LLP	Legal counsel services (Fiduciary). Named service provider	325,000	237,821	87,179	7/1/2021	6/30/2024	
REED SMITH LLP	Legal counsel services (Tax). Named service provider	35,000	38,681	(3,681)	4/18/2018	4/18/2021	Contract based on time and material. Total annual costs are limited by approved budget. Contract for Tax Counsel Legal Services is separate from Fiduciary Counsel Legal Services, but budget overage is absorbed by total legal budget.
RSM US LLP	I.T. auditor for general controls and cyber security consultant for ERP project.	296,460	174,594	121,866	6/1/2019	N/A	Multiple contracts that overlap years.
SIDEPATH, INC.	Contracted Supplier IT equipment and support	90,000	129,978	(39,978)	7/15/2016	N/A	Total annual costs are limited by approved budget. Overage due to costs for data center maintenance coming in higher than anticipated and was absorbed by other categories in services and supplies.
STATE STREET CORPORATION	Fund Custodian & Securities Lending Manager. Named Service Provider	575,000	580,000	(5,000)	7/1/2017	6/30/2023	Contract excludes \$5,000 for analytics purchased separately.
THE BURGESS GROUP LLC (CAISSA, LLC)	Investment risk tracking software subscription.	165,000	185,625	(20,625)	8/7/2020	8/6/2021	One year term with two automatic renewals. Difference of \$20,625 represents portion of FY20 subscription expensed in FY21.
THE SEGAL COMPANY	Actuarial services. Named Service Provider.	400,000	274,671	125,329	8/25/2016	12/31/2022	Contract value of \$138,000 represents only scheduled costs for specific reports. Contract also includes negotiated rates for additional consulting as requested. Total annual cost is limited to approved budget.
TOWNSEND HOLDINGS LLC	Real Estate Investment Consultant. Named service provider	289,924	289,924	-	4/1/2018	3/31/2022	Contract value is adjusted by CPI annually.



## Memorandum

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**DATE:** February 22, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Steve Delaney, Chief Executive Officer  
**SUBJECT:** 2022 POLICY COMPLIANCE REPORT

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### Written Report

#### Background/Discussion

Beginning in 2019, at the Board's request, OCERS' executive staff produces an annual report relating to Board policy compliance. Different from the triennial review process whereby every policy is considered for current applicability and possible update or modification, this report addresses whether OCERS staff has been compliant with each of the OCERS Board policies.

Attached is a list of each policy, and the executive manager assigned to determine compliance.

The OCERS executive team can here attest to agency compliance with all policies except one:

1. Monitoring and Reporting Policy

#### Performance Review of Real Estate Investment

As previously reported in 2021, this policy requires this report be provided quarterly. In recent years, with the divestment of actual brick and mortar buildings in the real estate portion of the portfolio, the report changed to a semi-annual item. The Monitoring and Reporting Policy will be reviewed at a future Governance Committee meeting to consider and codify that practice.

#### Submitted by:



**SD - Approved**

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Steve Delaney  
Chief Executive Officer

02-22-2022 REGULAR BOARD MEETING - R-11 Compliance Report Memo



**Policy Compliance Review Status Report**

This report details the Status and Compliance of Board Policies and Charters.

Committee: **ALL**  
Assigned To: **ALL**  
Doc. Category: **BP - Board Policy**

From Date:  
To Date:  
No. of Records: **52**



DOCUMENT NAME	DOCUMENT CATEGORY	COMMITTEE	ASSIGNED TO	REVIEWER ROLE	LAST BOARD REVIEW DATE	NEXT BOARD REVIEW DATE	LAST INTERNAL AUDIT REVIEW DATE **	COMPLIANCE REVIEWED DATE	IN COMPLIANCE?
<a href="#">AB 361 Resolution 2022-01</a>	BP - Board Policy	Unknown	Gina Ratto		1/1/2022	12/31/2024		2/1/2022	Yes
<a href="#">Actuarial Valuation Policy</a>	BP - Board Policy	Governance	Brenda Shott	Assistant CEO, Internal	8/17/2020	8/17/2023	11/14/2018	2/3/2022	Yes
<a href="#">Adjudication Policy and Administrative Hearing Rules (for cases filed between June 1, 2018 to August 17, 2020)</a>	BP - Board Policy	Governance	Gina Ratto	General Counsel	1/16/2018	1/15/2021		2/1/2022	Yes
<a href="#">Administrative Hearing Procedures (for appeals filed prior to June 1, 2018)</a>	BP - Board Policy	Disability	Gina Ratto	General Counsel	12/14/2015	12/13/2018		2/1/2022	Yes
<a href="#">Administrative Review and Hearing Policy (for cases filed on or after August 18, 2020)</a>	BP - Board Policy	Disability	Gina Ratto	General Counsel	8/17/2020	8/17/2023		2/1/2022	Yes
<a href="#">Budget Approval Policy</a>	BP - Board Policy	Governance	Tracy Bowman	Finance Director	4/20/2020	4/20/2023		2/3/2022	Yes
<a href="#">CEO Performance Evaluation Policy</a>	BP - Board Policy	Personnel	Cynthia Hockless	Director of Human Resources	8/19/2019	8/18/2022		1/24/2022	Yes
<a href="#">Code of Ethics and Standards of Professional Conduct Policy</a>	BP - Board Policy	Investments	Molly Murphy	CIO	1/24/2018	1/23/2021		2/3/2022	Yes
<a href="#">Communications Policy</a>	BP - Board Policy	Governance	Robert Kinsler	Communications Manager	4/20/2020	4/20/2023		1/31/2022	Yes
<a href="#">Compensation Earnable Policy</a>	BP - Board Policy	Governance	Suzanne Jenike	Assistant CEO, External	6/21/2021	6/20/2024		2/2/2022	Yes
<a href="#">Conflict of Interest Code</a>	BP - Board Policy	Governance	Gina Ratto	General Counsel	8/21/2020	8/21/2023		2/1/2022	Yes
<a href="#">Cost Impacting Policy</a>	BP - Board Policy	Governance	Gina Ratto	General Counsel	4/19/2021	4/18/2024		2/1/2022	Yes
<a href="#">Declining Employer Payroll Policy</a>	BP - Board Policy	Governance	Suzanne Jenike	Assistant CEO, External	12/16/2019	12/15/2022		2/2/2022	Yes
<a href="#">Disability Retirement Reassignment Policy</a>	BP - Board Policy	Disability	Suzanne Jenike	Assistant CEO, External	4/19/2021	4/18/2024		2/2/2022	Yes
<a href="#">Disposition of Surplus Property Policy</a>	BP - Board Policy	Governance	Brenda Shott	Assistant CEO, Internal	4/19/2021	4/18/2024		2/3/2022	Yes
<a href="#">Election Procedures</a>	BP - Board Policy	Governance	Cynthia Hockless	Director of Human Resources	11/16/2020	11/16/2023		2/3/2022	Yes
<a href="#">Ethics Compliance and Fraud Hotline</a>	BP - Board Policy	Audit	David Kim	Director of Internal Audit	5/18/2020	5/18/2023		1/21/2022	Yes
<a href="#">Extraordinary Expense Recovery Policy</a>	BP - Board Policy	Governance	Gina Ratto	General Counsel	4/19/2021	4/18/2024		2/1/2022	Yes
<a href="#">Hearing Officer Selection and Retention Policy</a>	BP - Board Policy	Disability	Suzanne Jenike	Assistant CEO, External	4/19/2021	4/18/2024		2/2/2022	Yes
<a href="#">Indemnity and Defense Policy</a>	BP - Board Policy	Governance	Gina Ratto	General Counsel	6/17/2019	6/16/2022		2/1/2022	Yes
<a href="#">Investment Policy Statement</a>	BP - Board Policy	Investments	Molly Murphy	CIO	12/16/2019	12/15/2022		2/3/2022	Yes
<a href="#">Legislative Policy</a>	BP - Board Policy	Governance	Gina Ratto	General Counsel	4/19/2021	4/18/2024		2/1/2022	Yes
<a href="#">Member Services Customer Service Policy</a>	BP - Board Policy	Governance	Jeff Lamberson	Director of Member Services	10/15/2018	10/14/2021		2/3/2022	Yes
<a href="#">Membership Eligibility Requirements</a>	BP - Board Policy	Governance	Jeff Lamberson	Director of Member Services	7/20/2020	7/20/2023	11/12/2018	2/3/2022	Yes
<a href="#">Monitoring and Reporting</a>	BP - Board Policy	Governance	Steve Delaney	CEO	1/16/2019	1/15/2022		2/9/2022	Yes
<a href="#">OCERS Compensation Policy</a>	BP - Board Policy	Personnel	Brenda Shott	CEO	10/11/2017	10/10/2020		2/3/2022	Yes
<a href="#">Operational Risk Policy</a>	BP - Board Policy	Audit	Brenda Shott	Assistant CEO, Finance and Internal Operations	2/19/2019	2/18/2022		2/3/2022	Yes
<a href="#">Overpaid and Underpaid Contributions Policy</a>	BP - Board Policy	Governance	Suzanne Jenike	Assistant CEO, External	11/15/2021	11/14/2024	10/23/2018	2/2/2022	Yes
<a href="#">Overpaid and Underpaid Plan Benefits Policy</a>	BP - Board Policy	Governance	Suzanne Jenike	Assistant CEO, External	11/15/2021	11/14/2024		2/2/2022	Yes
<a href="#">Pay Item Request and Approval Procedures for Employers</a>	BP - Board Policy	Governance	Suzanne Jenike	Assistant CEO, External	6/21/2021	6/20/2024		2/2/2022	Yes
<a href="#">Pay Item Review Policy</a>	BP - Board Policy	Governance	Suzanne Jenike	Assistant CEO, External	3/18/2019	3/17/2022		2/2/2022	Yes
<a href="#">Pensionable Compensation Policy</a>	BP - Board Policy	Governance	Suzanne Jenike	Assistant CEO, External	6/21/2021	6/20/2024		2/2/2022	Yes

Executed: 2/9/2022 9:25:49 AM  
Executed By: OCERS\anandi

\*\* Dates represent Internal Audit reports or Management Action Plan follow-ups in which portions of the policies/charters were reviewed. Does not confirm that the policy in its entirety was reviewed.

Doc. No. 0001-1090-R0001  
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**Policy Compliance Review Status Report**

This report details the Status and Compliance of Board Policies and Charters.

Committee: **ALL**  
 Assigned To: **ALL**  
 Doc. Category: **BP - Board Policy**

From Date:  
 To Date:  
 No. of Records: **52**



DOCUMENT NAME	DOCUMENT CATEGORY	COMMITTEE	ASSIGNED TO	REVIEWER ROLE	LAST BOARD REVIEW DATE	NEXT BOARD REVIEW DATE	LAST INTERNAL AUDIT REVIEW DATE **	COMPLIANCE REVIEWED DATE	IN COMPLIANCE?
<a href="#">Placement Agent Disclosure Policy</a>	BP - Board Policy	Investments	Molly Murphy	CIO	1/24/2018	1/23/2021		2/3/2022	Yes
<a href="#">Planning Policy</a>	BP - Board Policy	Governance	Steve Delaney	CEO	4/20/2020	4/20/2023		2/9/2022	Yes
<a href="#">Procurement and Contracting Policy</a>	BP - Board Policy	Governance	Cynthia Hockless	Director of Human Resources	10/15/2018	10/14/2021		1/24/2022	Yes
<a href="#">Protocol for Handling Workplace Complaints Against Board Members and Executives</a>	BP - Board Policy	Governance	Gina Ratto	General Counsel	10/21/2019	10/20/2022		2/1/2022	Yes
<a href="#">Proxy Voting</a>	BP - Board Policy	Investments	Molly Murphy	CIO	1/24/2018	1/23/2021		2/3/2022	Yes
<a href="#">Public Records and Data Request Policy</a>	BP - Board Policy	Governance	Robert Kinsler	Communications Manager	4/20/2020	4/20/2023		1/31/2022	Yes
<a href="#">Quiet Period Policy</a>	BP - Board Policy	Governance	Brenda Shott	Assistant CEO, Internal	4/20/2020	4/20/2023		2/3/2022	Yes
<a href="#">Records Management Policy</a>	BP - Board Policy	Governance	Gina Ratto	Assistant CEO, Internal				1/26/2022	Yes
<a href="#">Reserves and Interest-Crediting Policy</a>	BP - Board Policy	Governance	Brenda Shott	Assistant CEO, Internal	12/18/2017	12/17/2020		2/3/2022	Yes
<a href="#">Retirement Enhancement Review Policy</a>	BP - Board Policy	Governance	Suzanne Jenike	Assistant CEO, External	3/18/2019	3/17/2022		2/2/2022	Yes
<a href="#">Rules of Parliamentary Procedure</a>	BP - Board Policy	Governance	Gina Ratto	General Counsel	3/18/2019	3/17/2022		2/1/2022	Yes
<a href="#">SACRS Voting Authority Policy</a>	BP - Board Policy	Governance	Steve Delaney	CEO	4/20/2020	4/20/2023		2/9/2022	Yes
<a href="#">Securities Litigation Policy</a>	BP - Board Policy	Governance	Gina Ratto	General Counsel	8/17/2020	8/17/2023		2/1/2022	Yes
<a href="#">Succession Policy</a>	BP - Board Policy	Personnel	Steve Delaney	CEO	1/19/2016	1/18/2019		2/9/2022	Yes
<a href="#">Travel Policy</a>	BP - Board Policy	Governance	Gina Ratto	General Counsel	10/21/2019	10/20/2022		2/1/2022	Yes
<a href="#">Trustee Education Policy</a>	BP - Board Policy	Governance	Cynthia Hockless	Director of Human Resources	10/21/2019	10/20/2022		1/24/2022	Yes
<a href="#">Whistleblower Policy</a>	BP - Board Policy	Governance	Cynthia Hockless	Director of Human Resources	1/16/2019	1/15/2022		1/24/2022	Yes
<a href="#">Withdrawing Employer Continuing Obligation Policy</a>	BP - Board Policy	Governance	Suzanne Jenike	Assistant CEO, External	12/16/2019	12/15/2022		2/2/2022	Yes
<a href="#">Withdrawing Employer Policy Fully Satisfied Obligation Policy</a>	BP - Board Policy	Governance	Suzanne Jenike	Assistant CEO, External	12/16/2019	12/15/2022		2/2/2022	Yes
<a href="#">Write Off Policy</a>	BP - Board Policy	Governance	Suzanne Jenike	Assistant CEO, External	11/15/2021	11/14/2024	6/5/2019	2/2/2022	Yes



## Memorandum

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**DATE:** February 22, 2022  
**TO:** Members of the Board of Retirement  
**FROM:** Manuel Serpa, Staff Attorney  
**SUBJECT:** **SUMMARY OF DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IN *O'NEAL V. STANISLAUS COUNTY EMPLOYEES' RETIREMENT ASSOCIATION, ET AL* (CASE NO. F079201)**

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### Written Report

#### *Case Summary*

On November 8, 2021, the Fifth District Court of Appeal (“DCA”) affirmed the decision of the Stanislaus County Superior Court in favor of defendants Stanislaus County Employees’ Retirement Association (“StanCERA”) and the County of Stanislaus (“County”) in *O’Neal v. Stanislaus County Employees’ Retirement Association, et al.* (Case No. F079201) (“*O’Neal III*”). Though this decision is unpublished, it provides important guidance on the fiduciary duties of retirement system boards in its affirmation of the trial court’s determination that the StanCERA Board had not violated its fiduciary duties of loyalty and prudence in the late 2000s. There are three key points:

1. The retirement board's process of obtaining input from their qualified expert advisors, deliberating about that input, and then ultimately relying on that advice met the duty of prudence.
2. Because the StanCERA Board's five challenged decisions were intended to “enhance the security of vested benefits” they were not violations of the Board’s duties of loyalty or prudence.
3. The DCA found the testimony of StanCERA’s consulting actuary about how the five decisions were made and the consequences for StanCERA and its members to have significant probative value when determining whether the fiduciary duty was met.

Appellants are County employees (“Appellants”) who filed suit after the StanCERA Board, in 2009-2011, made five disputed financial decisions that effectively eliminated nonvested benefits for certain members that had been funded for decades with nonvaluation reserves. These decisions were made in response to the investment losses from the Great Recession and the related financial hardships that threatened layoffs to County employees. These five contested decisions were:

- (1) the 2009 decision to adopt a 30-year level percent of pay amortization schedule for unfunded actuarial accrued liability (UAAL) and subsequent conduct resulting in continuing negative amortization rates;
- (2) the 2009 decision to transfer \$50 million from nonvaluation reserves to valuation funds;
- (3) the 2009 decision to transfer \$10 million from nonvaluation reserves to offset required employer contributions related to UAAL;
- (4) the 2010 decision to transfer \$21.4 million from nonvaluation reserves to offset required employer contributions related to UAAL; and
- (5) the 2011 decision to transfer \$14.3 million from nonvaluation reserves to offset required employer contributions related to UAAL.

According to the DCA in *O'Neal III*, the case presents a straightforward question: Why did the StanCERA Board authorize these five actions? Appellants argued the five actions constituted a breach of fiduciary duty because the StanCERA Board acted to protect the County at the expense of StanCERA's own members in an effective raid on the pension funds. StanCERA argued the Board acted to protect its members and the overall health of the system in a time of crisis. The trial court had held that appellants could not prove the StanCERA Board placed the County's interest ahead of its members and that the Board had acted with proper prudence when making these decisions. The DCA affirmed, finding no reversible error.

While most of the *O'Neal III* decision focuses on and rejects Appellants' claims of procedural errors by the trial court, the opinion includes several important points for trustees of public pension funds. The DCA found that the StanCERA Board's consideration of the County's potential for layoffs resulting from increases in its retirement contributions provided a reasonable basis for taking the five challenged decisions. Each of the five decisions lessened the immediate impact of the retirement contribution increases on the County. The scope of a trustee's fiduciary duty may include consideration of current members' potential job losses, their effect on members' future interest in a pension, and their effect on the overall ability of the plan to continue paying benefits to those already retired. As such, the decisions were not breaches of the Board's fiduciary duty of loyalty to StanCERA members.

The DCA disagreed with Appellants' claim that the decision to adopt a negative amortization schedule could benefit only the employer. On the contrary, a fact finder could conclude that it benefits employees, at least through job retention results. Other benefits, such as reduced volatility and increased preservation of employer contributions in a time of financial crisis could also demonstrate both short- and long-term benefits to the trust. The DCA discussed the testimony of StanCERA's consulting actuary, who testified both as a witness and as an expert. This expert testified that the plan was actuarially sound and confirmed there were no actuarial rules against implementing negative amortization schedules.



The DCA also found substantial evidence that the StanCERA Board's acts did not violate its fiduciary duty of prudence. It pointed out evidence in the record that the County and StanCERA were suffering from a significant financial downturn between 2009 and 2011. The County had written StanCERA to highlight problems in the County's budget and how those problems might affect StanCERA and its members. The StanCERA Board took that information and engaged its experts, both actuarial and legal, to determine what course of action it could take in response. Those experts provided StanCERA with options for reducing the County's required contributions in the short term, which would reduce the massive employer contribution increases and thereby reduce the risk of job losses. The StanCERA Board held public meetings and decided upon the five contested actions after hearing from its experts, its members, and the public.

Appellants' contentions that the StanCERA Board made an error in assessing the situation or made what ultimately resulted in less-than-optimal financial decisions were rejected. Such decisions were within the board's authority, provided it acted in line with its fiduciary responsibilities: "[a] decision made under the proper fiduciary responsibilities does not morph into an improper action merely because, in hindsight, it was not the best decision available." The StanCERA Board had its actuaries regularly report on ongoing losses, the state of the market, and how those major events were affecting employer contribution numbers. The DCA also pointed to expert testimony that the StanCERA Board had "followed a prudent process" by hiring well-qualified and appropriate experts, including an actuarial firm and outside fiduciary counsel. The board considered those expert opinions at public meetings, and ultimately relied on them. As such, the DCA found it reasonable for the trial court to conclude the StanCERA Board met its general duties of prudence in seeking to reduce employer contributions.

Finally, the DCA concluded that the StanCERA's duty of loyalty was met because the money in the nonvaluation reserves did not fund earned benefits and was thus spent at the discretion of the board. Moving these funds to support earned benefits fulfilled the purposes of the StanCERA trust in part by enhancing the security of the vested benefits. It was, therefore, in the best interests of the members and the beneficiaries. Significantly, the collateral benefit the transfer had of lowering employer contributions did not show a violation of the duty of loyalty. Expert testimony compared the effect of the transfer to regularly accepted practices like asset smoothing, where losses are averaged over multiple years to aid employer planning, and limited partnership investments, where returns may be split between the plan and a general partner. Furthermore, the DCA found consideration of members' jobs was consistent with the duty of loyalty. All fulltime employees are members of the retirement system and, thus, should have their interests considered. If the StanCERA Board's actions resulted in the County refusing or being unable to pay its employer contributions, members' interests would be harmed.

In conclusion, the DCA affirmed the trial court's determination that the StanCERA Board had not violated its fiduciary duties of loyalty and prudence to the members of StanCERA.

**Submitted by:**



**MS - Approved**

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Manuel Serpa  
Staff Attorney